LEAGUE OF NATIONS

ACTS

OF THE

CONFERENCE FOR THE CODIFICATION OF INTERNATIONAL LAW

Held at The Hague from March 13th to April 12th, 1930

MEETINGS OF THE COMMITTEES

Vol. III

MINUTES OF THE SECOND COMMITTEE

TERRITORIAL WATERS

GENEVA, 1930.

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President : His Excellency M. Göppert (Germany).
Vice-President : His Excellency M. Antonio Goicoechea (Spain).
Rapporteur : M. J. P. A. François (Netherlands).

AUSTRALIA

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Sir Maurice Gwyer, K.C.B. (His Majesty's Procurator-General and Solicitor for the Affairs of His Majesty's Treasury).

AUSTRIA

Delegate :

M. Marc Leitmaier (Doctor of Law, Legal Adviser of the Federal Chancellery, Department for Foreign Affairs).

BELGIUM

Delegate :

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Substitute :

M. Henri Rolin (Legal Adviser of the Ministry for Foreign Affairs).

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Substitute :

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Substitute :

Dr. José Luís Arango (Doctor in Jurisprudence and Political Sciences, Graduate of the Institute of Higher International Studies, Paris, formerly in the Consular Service, Acting Chargé d'Affaires to Her Majesty the Queen of the Netherlands).

CUBA

Delegate :

His Excellency M. C. de Armenteros (Doctor of Law, Envoy Extraordinary and Minister Plenipotentiary to the Swiss Federal Council).

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Delegates :

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Dr. František Sitensky (Chief Counsellor at the Ministry of Commerce).

Experts :

Dr. Vladimir Matějka (First Secretary of the Legation to Her Majesty the Queen of the Netherlands).

Dr. Bohumil Kučera (Secretary of the Legation to Her Majesty the Queen of the Netherlands, Privat-docent of Private and Public International Law).

[1] This list contains only the names of members of delegations who were expressly notified to the Secretariat as having been appointed to attend the meetings of the Committee.

FREE CITY OF DANZIG

Delegate :

M. Georges Crusen (Doctor of Law, President of the Supreme Court of the Free City).

DENMARK

Delegate :

M. V. L. Lorck (Director of Navigation, Captain).

EGYPT

Delegate :

His Excellency Abd el Hamid Badaoui Pasha (President of the Litigation Committee).

ESTONIA

Delegate :

M. Alexandre Varma (Mag. Jur., Director of Administrative Questions at the Ministry for Foreign Affairs).

Substitute :

His Excellency M. Ants Piip (Professor of International Law at the University of Tartu, former Chief of State, former Minister for Foreign Affairs).

FINLAND

Delegate :

Dr. Onni Talas (Professor at the University of Helsinki, former Minister of Justice, Member of Parliament).

Substitute :

His Excellency Dr. Rafael Erich (Envoy Extraordinary and Minister Plenipotentiary to His Majesty the King of Sweden, former Prime Minister).

FRANCE

Delegate :

M. Gilbert Gidel (Professor at the Faculty of Law of the University of Paris and at the Free School of Political Sciences).

Substitutes :

Lieutenant-Commander Lambert (of the General Staff of the Navy).

M. Lecourbe (Director of Maritime Fisheries at the Ministry of the Mercantile Marine).

Captain Guichard (of the Historical Service of the Navy).

M. Besson (of the Ministry for the Colonies).

GERMANY

Delegates :

M. Göppert (Minister Plenipotentiary).

Dr. W. Schücking (Professor at the University of Kiel, Member of the Permanent Court of Arbitration).

Substitute :

M. Eckhardt (Oberregierungsrat).

GREAT BRITAIN AND NORTHERN IRELAND

Delegate :

Sir Maurice Gwyer, K.C.B. (His Majesty's Procurator-General and Solicitor for the Affairs of His Majesty's Treasury).

Substitute :

Mr. A. W. Brown, LL.D. (Assistant Solicitor to His Majesty's Treasury).

Experts :

Mr. W. H. Hancock (Secretary's Department, Admiralty).

Lieutenant-Commander R. M. Southern (Hydrographic Department, Admiralty).

GREECE

Delegate :

M. J. Spiropoulos (Professor of International Law at the University of Salonika).

Substitute :

M. Coutzalexis (Chargé d'Affaires at the Legation to Her Majesty the Queen of the Netherlands).

ICELAND

Delegate :

His Excellency M. Sveinn Bjørnsson (Envoy Extraordinary and Minister Plenipotentiary, Representative of Iceland in Denmark).

INDIA

Delegate :

Sir Ewart Greaves (former Judge of the High Court, Calcutta, Doctor of Law).

Expert :

Mr. W. D. Croft (Principal, India Office, London) (replacing Mr. C. H. Silver).

IRISH FREE STATE

Delegate :

Mr. Charles Green (Chief Inspector, Department of Fisheries).

ITALY

Delegates :

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Professor Gabrielle Salvioli (of the Royal University of Pisa).

Substitutes :

Professor Giulio Diena (of the Royal University of Pavia).

Professor Arrigo Cavaglieri (of the Royal University of Naples).

Experts :

Admiral of Division Giuseppe Cantú.

Staff Colonel Camillo Rossi (Military Attaehé at Berlin).

Don Carlo Cao (Barrister-at-Law, Colonial Direetor).

Commendatore Dr. Miehele Giuliano (Counsellor at the Court of Appeal).

Commendatore Manlio Molfese (Head of Department of the Civil Aviation and Air Traffie).

Marquis Dr. Luigi Mischi, Colonial Director.

JAPAN

Delegate :

His Excellency Viscount Kintomo Mushakoji (Envoy Extraordinary and Minister Plenipotentiary to His Majesty the King of Sweden).

Experts :

M. S. Taehi (Professor at the Imperial University of Tokio, Member of the Imperial Aeademy, Associate of the Institute of International Law).

M. S. Hidaka (Seeretary of Embassy, Secretary at the Japanese Bureau for the League of Nations).

LATVIA

Delegate :

His Exeelleney M. G. P. Albat (Minister Plenipotentiary, Secretary-General at the Ministry for Foreign Affairs, Professor in the Faculty of Law at the University of Riga).

Expert :

Admiral Count A. Keyserling (Chief of the Navy).

MEXICO (UNITED STATES OF)

Delegate :

M. Eduardo Suarez (Head of the Legal Department at the Ministry for Foreign Affairs).

Expert :

M. Fernández de la Regata (First Secretary of Legation to Her Majesty the Queen of the Netherlands).

NETHERLANDS

Delegate :

M. J. P. A. François (Doetor of Law, Chief of the League of Nations Seetion at the Ministry for Foreign Affairs).

NORWAY

Delegate :

His Exeelleney M. Arnold Raestad (Doctor juris, former Minister for Foreign Affairs).

Experts :

M. C. F. Smith (Counsellor of Legation, Consul at San Franeisco).

M. Sigurd Johannessen (Director of Ministry).

M. Christopher Meyer (Commander, Royal Navy).

M. L. J. H. Jorstad (Chief of Division at the Ministry for Foreign Affairs).

PERSIA

Delegate :

His Excellency M. Sépahbody (Permanent Delegate aceredited to the League of Nations, Envoy Extraordinary and Minister Plenipotentiary to the Swiss Federal Council).

POLAND

Delegate :

Professor J. Makowski (Doetor of Law, Chief of the Treaty Section in the Ministry for Foreign Affairs).

Expert :

Commander E. Solski (of the Staff).

PORTUGAL

Delegate :

His Excelleney Dr. José María Vilhena Barbosa de Magalhães (Professor of Law at the University of Lisbon, Member of the Committee of Experts for the Progressive Codifieation of International Law of the League of Nations, former Minister for Foreign Affairs, of Justice and of Public Education).

Expert :

Commander Marcelino Carlos (Director of Fisheries at the Ministry of Marine).

ROUMANIA

Delegate :

M. Georges Meitani (Professor of International Law at the University of Bucharest).

SOUTH AFRICA (UNION OF)

Delegate :

Mr. C. W. H. Lansdown, K.C., B.A., LL.B. (Senior Law Adviser to the Government of the Union of South Afriea, ex-Attorney-General of the Provinee of the Cape of Good Hope).

SPAIN

Delegate :

His Exeelleney M. Antonio Goieoeehea (Former Minister of the Interior, Member of the Permanent Court of Arbitration, Member of the Royal Academy of Naval and Politieal Sciences, Member

of the General Codification Commission of Spain, Professor of International Law at the Diplomatic Institute, Madrid.

Substitute :

M. Miguel de Angulo (Procurator-General of the Fleet).

SWEDEN

Delegate :

His Excellency M. A. E. M. Sjöborg (Envoy Extraordinary and Minister Plenipotentiary to His Majesty the King of Italy).

Experts :

M. N. L. Åkerblom (Commodore, Chief of Section of the General Staff of the Navy).

M. K. S. T. N. Gihl (Chief of Archives at the Ministry for Foreign Affairs).

TURKEY

Delegate :

Dr. Chinasi Bey (Director at the Ministry of Justice).

UNITED STATES OF AMERICA

Delegate :

Mr. David Hunter Miller (Editor of Treaties, Department of State).

Substitutes :

Mr. Jesse S. Reeves (Professor of International Law, University of Michigan).

Mr. Manley O. Hudson (Professor of International Law, Harvard University).

Commander A. A. Corwin (Naval Attaché).

Mr. S. W. Boggs (Geographer, Department of State).

URUGUAY

Delegate :

His Excellency Dr. Enrique Buero (Envoy Extraordinary and Minister Plenipotentiary to His Majesty the King of the Belgians and to Her Majesty the Queen of the Netherlands).

YUGOSLAVIA (KINGDOM OF)

Delegates :

Dr. Miléta Novakovitch (Professor at the University of Belgrade, former Judge *ad hoc* of the Permanent Court of International Justice).

Dr. Anté Verona (Rector of the School of Higher Economic and Commercial Studies at Zagreb).

Substitute :

Dr. Slavko Stoikovitch (Attaché at the Reparations Commission).

UNION OF SOVIET SOCIALIST REPUBLICS

Observers

His Excellency M. Dmitri Kourski (Ambassador to His Majesty the King of Italy).

M. Georges Lachkevitch (Legal Adviser at the Embassy to the President of the French Republic).

M. Vladimir Egoriew (Legal Adviser at the People's Commissariat for Foreign Affairs).

Second Committee : TERRITORIAL WATERS

FIRST MEETING

Monday, March 17th, 1930, at 10 a.m.

Chairman : M. GÖPPERT.

1. TELEGRAM OF GOOD WISHES FROM M. ZALESKI, ACTING PRESIDENT OF THE COUNCIL OF THE LEAGUE OF NATIONS.

The Chairman :

Translation : The President of the Conference has requested me to communicate to the members of the Committee the following telegram, dated March 15th, from His Excellency M. Zaleski, Acting President of the Council of the League of Nations :

" I beg you to accept my best wishes for the success of the work of the Conference, which I am sure will help to strengthen in all nations a sense of the great value of the international ties created by law and the sentiment of human solidarity. — ZALESKI, President of the Council of the League of Nations."

M. Heemskerk, President of the Conference, has sent the following telegram in reply :

" I am sure I am expressing the unanimous feeling of the Conference for the Codification of International Law when I thank Your Excellency for your good wishes for the success of the Conference. — HEEMSKERK, President."

2. CONSTITUTION OF THE BUREAU OF THE COMMITTEE.

The Chairman :

Translation : I propose that we complete our Bureau by appointing a Vice-Chairman and a Rapporteur.

M. de Armenteros (Cuba) :

Translation : I propose that we appoint as our Vice-Chairman an eminent man who has done splendid work in his own country, our distinguished colleague M. Goicoechea, first delegate of Spain.

M. GOICOECHEA (Spain) *was appointed Vice-Chairman of the Committee.*

M. Goicoechea (Spain) :

Translation : Gentlemen, — I am very grateful to you for your kind decision, though I am sure it was unmerited on my part. I accept it with an earnest desire to promote the success of the Conference's work.

The Chairman :

Translation : I thank M. Goicoechea for his acceptance, and congratulate him both on behalf of the Committee and on my own behalf. I will ask him to take his place at the Chairman's table.

I venture to propose that the Committee appoint as its Rapporteur Dr. François, Head of the League of Nations Department at the Ministry for Foreign Affairs and representative of the Netherlands.

Dr. FRANÇOIS (Netherlands) *was appointed Rapporteur of the Committee.*

Dr. François (Netherlands) :

Translation : I gladly accept, and place myself at the Committee's disposal.

3. FORM OF THE RECORD OF THE MEETINGS.

The Chairman :

Translation : The speeches delivered by the members of the Committee will be reproduced by the verbatim reporters and will constitute the record of the meetings. The French provisional record will consist of the speeches delivered in French and the interpretation of those delivered in English. The English provisional record will consist of the speeches delivered in English and the interpretation of those delivered in French.

The translations of the speeches will be revised before the records are issued in their final form.

In accordance with Article XI of the Rules of Procedure, if no corrections are asked for within forty-eight hours, the text shall be regarded as approved and shall be deposited in the archives.

4. METHOD OF PROCEDURE FOR DEALING WITH THE BASES OF DISCUSSION.

The Chairman :

Translation : You have before you the documents reproducing the Bases of Discussion in the order which the Preparatory Committee thought best for the Conference's proceedings. These Bases of Discussion constitute a first attempt to deduce the substance of those rules which may secure acceptance by all countries. They may almost be regarded as the outcome of what in parliamentary procedure is termed " the first reading ". We are thus in the fortunate position of being able to begin with the second reading.

Generally speaking, a second reading does not involve a general discussion, and, accordingly, I do not propose that we should open one here. If my colleagues agree, we shall at once proceed to examine the Bases of Discussion. If we studied them chapter by chapter and Basis by Basis, however, our discussions would be somewhat fragmentary, and we might fail to reach a complete understanding.

I therefore propose that we begin by discussing Points I to VI.

Points I and II refer to territorial waters. Points III, IV and V relate to the " breadth of territorial waters ".

The proposal of the Chairman was adopted.

5. QUESTION OF THE TERMINOLOGY TO BE USED IN THE COURSE OF THE DISCUSSION : PROPOSAL BY THE FRENCH DELEGATION.

M. Gidel (France) :

Translation : The French delegation has handed to the Secretariat a communication which will be distributed to you in the course of the present meeting, but I ask leave to read it to you now:

" The French delegation, before drafting the textual amendments or modifications which it will duly submit in accordance with the request of the President of the Conference, thinks that it would perhaps be desirable, at the outset of the Committee's work, to give careful attention to the terminology to be used in the course of the discussions.

" It would be desirable, before discussing the various bases suggested, to define the exact meaning and scope of the terms employed. If the terms to be used are chosen and their meaning defined — without prejudice, of course, to fundamental questions — it would be of great help in the discussions, as the same words would not be used in different senses. It would be particularly useful, since there are certain terms applied to the waters adjacent to State territory which have not always, in international and national doctrine and practice, been given either the same meaning or the same field of application.

" From the Bases of Discussion submitted to the Committee, it appears that four categories of waters may be distinguished. Each should be given a specific name the meaning of which would be clear to all the delegates during the discussion of each particular question.

" Counting from land to sea, these categories are as follows : inland waters, territorial waters, adjacent waters, the high sea.

" The Committee will doubtless agree with the French delegation as to the desirability of taking a decision upon the adoption of this terminology before beginning the examination of the Bases of Discussion."

M. Meitani (Roumania) :

Translation : The Roumanian delegation is of opinion that a preliminary examination would waste a great deal of our time. We might examine each article separately and consider the French delegation's proposals in so doing.

The Chairman :

Translation : The delegations, I think, will perhaps wish to reflect upon the French delegation's proposal ; that is to say, upon the terms to be used in the different languages and the definition to be given to each of the categories of waters which M. Gidel has mentioned. We shall have an opportunity of taking a decision on that point at the beginning of the next meeting.

6. EXAMINATION OF THE BASES OF DISCUSSION Nos. 1 TO 6 : GENERAL DISCUSSION.

Dr. Schücking (Germany) :

Translation : The first six points which we now have before us contain two principles the adoption of which would, in my opinion, constitute a great advance in the field of international law.

The first of these principles consists in the establishment of the sovereignty of the coastal State in a specified zone. This sovereignty is, of course, limited by the rights of common user, and may also be limited by the special rights of another State. Nevertheless, it must be recognised that this competence of the coastal State is of a general character, that it covers all subjects, and that it does not cease to be exercised unless a special and explicit rule of written or customary law is established in favour of third parties.

When fresh problems arise as the outcome of fresh developments or new circumstances, no proper solution can be found for them except on the basis of the principle of sovereignty — in other words, unless it is recognised that the coastal State may settle every question as it desires, subject, of course, to the special provisions of international law in favour of third parties.

Thus, according to the draft, the coastal State has what we call the " jurisdiction of jurisdiction ". For example, if oil is found in the coastal sea, it is the coastal State which can enact legislation regarding the exploitation of the oil. The vital interest of the coastal State requires sovereignty over a belt of the coastal sea.

The vital interest of the coastal State on the one hand and the interest of all nations in free navigation on the other are, so to speak, two centres of gravity, to both of which we find ourselves simultaneously drawn. Our duty is to reconcile these two interests by means of reasonable regulations ; in other words, we must find the point of equilibrium.

The interests of common user, however, are dealt with in the third part of the draft, and we need not discuss them now. The question whether the existence of certain rights of common user should be mentioned in the first article is simply a matter of drafting. As Rapporteur of the Committee of Experts, I preferred to mention this fact in the preliminary draft which I prepared, but we must leave that question until later.

If the coastal State is allowed sovereignty over a belt of sea, it is essential to determine the exact breadth of that belt. In this matter, the existing position is nothing less than chaotic. Not only do some States exceed the three-mile limit, but others put forward different claims in respect of different States ; while, in the case of others, again, the breadth differs in different spheres of activity, so that, in the words of one publicist, " there is not a single territorial sea, but a series of territorial seas ".

In my opinion, this state of affairs is the outcome of a particular conception of the legal character of the high sea. At one time, the high sea was held to be *res nullius*, and hence it was claimed that the coastal States had the right to extend their powers as far as they pleased. Even at that time, however, sovereignty was not recognised to exist in an area outside gunshot range, and, as we are all aware, gunshot range cannot serve as a criterion to-day.

Technical developments do not constitute the only reason which forces us to seek a fixed limit in order to ensure the freedom of the seas ; the theoretical basis of these claims on the part of the coastal States no longer holds good. To-day, the accepted theory is that the sea is *res communis omnium*. In point of fact, this very question was discussed here at The Hague some years ago by the Institute of International Law ; and, as I well remember, our thesis that the high sea is *res communis omnium* was supported, among others, by a jurist of such worldwide reputation as Sir Cecil Hurst.

This theory, in fact, is the only one which meets the requirements of all States and really corresponds to the relations existing to-day between all nations and the sea, as the outcome of the development of navigation and of the exploitation of the wealth of the sea. From this point of view it seems to us untenable that this common domain could possibly be reduced at any time by the acts of a coastal State, and we are bound to take common action to put an end to the existing state of affairs.

Serious difficulties arise, however, from the fact that the breadth of the adjacent sea in which the coastal States to-day exercise certain rights differs very considerably, and, further, from the fact that certain needs to carry on various activities in the adjacent sea may arise in the future.

As I have already said, we must consider the vital interests of coastal States. From this point of view, I am glad to note that our draft takes these difficulties into account and establishes the second principle ; that is to say, the creation of a second zone in which certain administrative functions may be exercised.

In principle, this zone must be of a different character. The coastal State should be given special and clearly defined rights only ; otherwise, the freedom of the seas would be endangered, because this second zone might gradually be transformed into a zone of complete sovereignty. We must, therefore, define the categories of rights appertaining to the coastal State.

It may be said that the present wording of Basis No. 5 is rather too vague, but this point will be discussed later. At the present stage, we must reach agreement on the main lines, and I hope we shall see our way to accept the two principles of which I have just been speaking, and which are, as it were, the two pillars supporting not only the whole of the first section but the whole draft.

M. Raestad (Norway) :

Translation : I should like, first, on behalf of the Norwegian delegation, to make a general observation. The Norwegian delegation is opposed to the idea that the results of the work of our Conference should take the form of declarations placing on record the law as it exists at present. This question was raised during the discussion on the Rules of Procedure, and it has not yet been settled.

As regards, more particularly, the question of territorial waters, we think that the decisions which we take must be given the form of a Convention. That does not merely imply certain formal changes in the Bases of Discussion, since the latter are conceived primarily in terms of a declaration recording existing law ; it also means that clauses must be included which regularly form part of Conventions, such as a clause reserving the rights acquired by signatory States in virtue of treaties or otherwise.

I will now turn to fundamental matters, and more particularly to the question of sovereignty. I will not, however, discuss the desirability of using the word " sovereignty ". Since we have to choose between terms which are practically analogous, we may as well choose " sovereignty " as any other. Nevertheless, there is a great difference between taking the view that the right of a coastal State over territorial waters is a right of sovereignty and the inclusion of the word " sovereignty " in a Convention.

We perhaps all agree that the coastal State has sovereignty over territorial waters. When we say so, however, we are, as it were, expressing a thought which is a synthetic construction of our own minds ; whereas, if we use the word " sovereignty ", we are inserting in our Convention a term which I can only describe as explosive. We are thereby establishing a guiding principle which has such force that we must, throughout our Convention, show that such and such exceptions exist ; and, unless we so prove it, the exception does not exist. We must, therefore, think well before using this word. Moreover, I realise that the Preparatory Committee itself carefully weighed the question of using this term, since it does not speak of " complete and exclusive sovereignty ", the term used in the Convention on Aerial Navigation.

We must also bear in mind that we have no guidance as regards the practice followed in territorial waters, since practice or custom relates not to sovereignty but to concrete usage.

When we consider the rights exercised by the coastal State, important distinctions must be made. In this, I quite agree with the delegate of France. A distinction must be drawn between the different parts of the waters, but a distinction must also be drawn between the rights granted by the coastal State when a foreign vessel crossing its territorial waters puts in at a port of that State and when it does not do so. This distinction is always observed in practice, and is regarded as particularly important in America. This is a difficult problem, because, when we speak of the powers exercised by the coastal State, the condition we have in mind is that the foreign vessel is putting in at a port. It is difficult to deduce from international custom what takes place when a vessel does not touch at a port.

If we isolate this important case we must deal with the case of a vessel crossing the territorial waters of a State without touching at any of its ports ; otherwise, we shall be faced with the complex problem of the right of innocent passage. What is this right of innocent passage? That is the whole problem.

According to the Bases of Discussion, the right of innocent passage may be regulated by the coastal State, subject to the observance of equality of treatment and abstention from certain acts of criminal or civil jurisdiction. That is not enough, however; other difficult and serious questions still arise. It is not merely a matter of ordinary civil or criminal jurisdiction ; a number of other problems are involved relating to matters such as the navigating of the vessel, its equipment, and so on. I have in mind more particularly the rules relating to radiotelegraphic equipment, the load-line, etc.

To what extent can a coastal State enforce rules governing these questions upon vessels exercising their right of free passage? Can it impose restrictions regarding the preparation of fish caught outside territorial waters, pilotage, and so on? It may perhaps be said that all these questions come within the interpretation of the right of innocent passage ; in that case, however, it means that nothing has really been codified. The somewhat vague word " sovereignty " has been used, and a very important but also very vague principle has been introduced, namely, that of the right of innocent passage.

I must apologise for having dwelt at, perhaps, undue length on this point, which we will consider again later, but it seems to me essential that we should know the exact issue of each point. We must carefully consider whether, in this respect also, some kind of progressive codification should not be carried out, whether we should not declare that the coastal States exercise the right of sovereingty in accordance with the rules of international law laid down by the Convention. We should then be taking the same course as in the Barcelona Convention, which states that the right of transit is subject to the exceptions laid down in international law.

I now come to the very vexed question of the limits of territorial waters. I quite agree with M. Schücking that some regulation must be made in this point ; nevertheless, desirable though it may be, it is a very complex matter, as we realise when we read the conflicting statements of the different Governments.

I myself will merely say that the Norwegian delegation will loyally co-operate in every effort to reach an agreement.

I will add one word, however, on the question of principle. We must clearly realise that there is a great difference between a rule of international law on the breadth of territorial waters and the ordinary rules governing the acts of men. One belt of sea or one coast is not interchangeable with another. There cannot be said to be any juridical unity in this matter ; juridically speaking, we have to deal in a sense with individual cases, and we must necessarily take this fact into account. The Bases of Discussion indeed show that the Preparatory Committee realised this.

Under what conditions may it be said that a limit — the three-mile limit, for example — is a rule of international law? According to the Statute of the Permanent Court, there are two sources of law — general principles and general practice accepted as international custom. The general principles certainly do not stipulate that the limit of territorial waters must be fixed at three miles, nor is there any obvious reason why they should be. This rule must therefore be based on international custom.

What is that custom, and what is the practice followed? That is a question of history, with which I will not deal ; and that history has been made more than once. I will merely say that it seems to me desirable to approach this difficult task by determining precisely when this three-mile limit for territorial waters was first employed. This starting-point can easily be found. It dates from the diplomatic discussion between the British and United States Government at the end

of the eighteenth and the beginning of the nineteenth centuries.

As you are all aware, in 1793 the British Government practically compelled the United States Government to adopt provisionally a three-mile limit for purposes of neutrality. The United States Government agreed, but maintained subsequently that that limit would have to be increased.

In 1818, the United States Government asked the British Government to allow its fishermen to approach as near as three miles to the coasts of British possessions. If, however, we go back a few years, to 1782, we shall find that the United States Government supported the French view at the peace negotiations, namely, that United States fishermen should be allowed to come within nine miles of the coast. In the interval, the three-mile limit became fixed, and it may be said to have been embodied in international law between 1793 and 1818.

At that period, the limit of four nautical miles — that is, one German maritime league — had been in force since about 1745 in the Danish-Norwegian Monarchy, and, some time later, in Sweden.

It has been maintained both by Norway and by Sweden ever since.

In its reply to the questionnaire, the British Government maintains that protests have always been made against this limit. Yet the first trace I have been able to discover — not of a diplomatic protest, but simply of a declaration to the contrary — goes back to 1874. It was not until much more recently that what may really be termed " protests " arose.

We cannot agree that the majority can lay down the law in the community of nations. Even if that had to be so, indeed, it could not change a situation which is legally established.

In the question of the fixing of the limit there are, in our view, two rules, one of which may be termed the older and the other the younger. The older rule is the four-mile limit and the younger is the three-mile limit.

I quite agree that the three-mile limit has become more widely applicable throughout the world and will, perhaps, achieve still greater success. Nevertheless, I maintain that these two rules are the outcome of rights which are absolutely equal and that they must be placed on the same footing.

Accordingly, the Swedish and Norwegian delegations cannot agree to the fixing of a three-mile-limit rule with exceptions. We have submitted an amendment to that effect — it will be circulated shortly — whereby Bases Nos. 3 and 4 are combined.

I have only a few words to add, mainly on the familiar question of base lines. This question is dealt with in Bases of Discussion Nos. 6, 7, and 8.

As regards the possibility of drawing base lines across bays, we would point to the developments which were brought about by the British Government when the arbitration clause was drawn up in 1910 regarding the North Atlantic fisheries.

We will simply add that the rule which applies to bays in the strict sense of the term and which allows a certain latitude in drawing these lines, must also apply to what are called the " intervals " between the islands of coastal archipelagoes *(Skjaergaard)*; that is to say, the open spaces formed by the sea.

Accordingly, the Swedish and Norwegian delegations are submitting an amendment proposing that Bases of Discussion Nos. 6, 7 and 8 shall be amalgamated, and that we should lay down rules couched in general terms.

M. Sjöborg (Sweden):

Translation: I propose to be brief and will not go into details at present, more especially since my Government's ideas are, generally speaking, the same as those expressed by the Norwegian delegate. I will therefore confine my observations to three points.

In the first place, like the Norwegian Government, my own Government is opposed to the adoption by the Conference of declarations regarding the tenor of international law. We think that the form of a Convention should be adopted, more particularly in the domain with which we are now dealing.

The second point relates to the " nature of territorial waters ", and covers Bases of Discussion Nos. 1 and 2. Here we find the term " sovereignty ". What does it mean? Sovereignty, entire sovereignty, sovereignty in accordance with the rules of international law, or what?

The question how to define the rights of the coastal State and what this expression should cover is closely connected with the rights of innocent passage, which we find in the next Bases of Discussion.

For practical purposes it would, I think, be desirable, when the general discussion is finished and we come to the individual Bases of Discussion, to defer consideration of Bases Nos. 1 and 2 until we have dealt with the Bases relating to the breadth of territorial waters, limit of territorial waters, etc.

Indeed, we cannot be sure of the meaning of " sovereignty " as used in Basis of Discussion No. 1 until we know the exact purport of the term " innocent passage ", or until the jurisdictional rights of the coastal State are defined.

Thirdly, M. Raestad, the delegate of Norway, has told us that an amendment has been submitted by the Norwegian and Swedish Governments. I will explain this amendment more fully later. For the moment, I simply wish to point out that, in our opinion, the three-mile rule is not a generally accepted rule, and that our four-mile rule is an even older one. We consider that we ought not to establish a rule with exceptions, but that it would be better to place all countries on a footing of equality and to combine Bases Nos. 3 and 4.

M. de Armenteros (Cuba) :

Translation : I asked to speak in order to support the French delegation's proposal that the existing differences between the various waters should be exactly defined.

M. Giannini (Italy) :

Translation : I will confine myself within the limits of discussion laid down by the Chairman, but I should like to point out to those of my colleagues who have raised certain questions regarding the form to be given to our acts that at present we cannot possibly fix that form. In my opinion, it will depend on the discussion itself.

The question raised by the French delegation is a very important one, but it must be deferred for the time being, as the Chairman proposes. I think we must not raise points that might prejudge the issue before we reach agreement on the substance of the question.

In connection with the substance of the question, three points arise. The first is the nature of the territorial waters. I should like to point out to the Committee that a convcntional rule already exists, though it is confined to air navigation. I refer to the first article of the Paris Convention, which will shortly be fairly widely accepted. This article expressly lays down that States have sovereignty over the air space and also over the territorial waters. It is, of course, only an air Convention; nevertheless, it means that all the States which accepted the Paris Convention have indirectly taken up a definite position towards this problem.

The problem has thus been stated in a positive manner, and we must ascertain whether we agree to the principle of full and entire sovereignty. If an agreement is reached on this point, wc must ascertain whether this principle should be embodied as a rule in an article, or whether it should be placed in the preamble. If we place it in the preamble we indirectly codify it. I would remind you that an indirect codification already exists, and has not caused any inconvenience. Moreover, if we are to draw up a Convention containing principles of positive law, we shall find it difficult to make any progress unless we have a clear idea of the principles we are laying down, and the consequences they may involve.

Whether we place the principle in the preamble or in the first article as the crowning achievement of the Convention, the result, in my opinion, is the same. What is essential is to take the principle of the full and entire sovereignty of States as our starting-point. The Italian delegation, as is clearly shown in the reply given by the Italian Government, does not think it matters whether the principle is embodied in the preamble or in the first article. This, however, will not solve the doubts or the problems raised by the Norwegian delegation.

I now come to the second question. I should like, first of all, to tell my colleagues that I cannot give any definite opinion on the actual proposal which has been made, because I do not yet know the text of the suggested amendment. In the meantime, however, I will state the problem.

According to Basis of Discussion No. 3, the breadth of territorial waters is three nautical miles. Our Scandinavian colleagues have raised some doubts on this question and, if I am not mistaken, on the actual possibility of establishing a definite rule in the matter. I am of the contrary opinion. I think we must be quite clear on this point, and the Italian view is clearly expressed in its reply. We think that the six-mile limit must be adopted as a principle.

My colleagues may remind me of all the historical questions that arise and all the doctrines that have been propounded on this subject. I am quite aware of these, but nowadays I attach little importance to history.

As all my colleagues are perfectly well aware, the requirements of air navigation in regard to territorial waters are in certain respects overthrowing the principles hitherto held. Thus, there are certain principles followed for police purposes which up to the present have been of only secondary importance. History, therefore, does not count; it is the actual current needs that count. In these circumstances, we feel bound to say that we must rigidly adhere to a breadth of six miles.

I now pass to the other problem — that which has been raised regarding the adjacent zone. I should like to remind you that our Chairman has asked us to consider the three problems together. In my opinion, however, the third problem cannot be solved unless an agreement is reached on the second.

What will the adjacent zone be? What will be the rights of States over that zone? That depends on the principle adopted in regard to the other question, because, if the three-mile basis is adopted — which I cannot accept — I think it will be necessary to give more extensive rights over the second zone. On the other hand, if we agreed upon a six-mile limit, I think we might abolish the second zone altogether, or at all events reduce the rights in respect of it. The requirements of States are such that they would be cramped within a three-mile limit. I repeat, if the principle of a three-mile limit is maintained, you will eventually acccpt something which will correspond to a limit of nine miles, or even more.

I have confined myself to these statements, which deal with the substance of the problem, but I should still like to say a few words on a question raised by our Scandinavian colleagues. The Convention must be quite clear and must remove the doubts which exist at present; otherwise, it would leave the door open to discussions such as the present one, and would prove to be a purely platonic Convention.

In conclusion, the Italian delegation accepts the principles laid down in Bases Nos. 1 and 2, except as regards the point whether the first principle will be placed in the preamble or in the Convention itself.

The Italian delegation agrees that Bases Nos. 3 and 4 should be combined in a single

article on the basis of a limit of six nautical miles. Lastly, my delegation accepts Basis No. 5 as a basis of discussion.

M. Novakovitch (Yugoslavia) :

Translation : On behalf of the Yugoslav delegation, I should like now to make certain statements on the three points so clearly set before us by the Swedish delegation.

The first point is the question of territorial waters. We fully agree that States should possess sovereignty over these waters. As M. Giannini says, that is a question which may be codified either directly or indirectly, but it would be very desirable to lay down this principle in the draft Convention which we are to prepare.

As regards the breadth of territorial waters, Yugoslavia has already adopted the limit of six nautical miles. Since we are not the only advocates of a six-mile limit, and since, as I understand, other States advocate a four-mile limit, it is clear that no single principle can be established. Consequently, it would, in my opinion, be preferable to place the different views on some kind of equal footing.

As regards the limits of territorial waters, I will defer stating the opinion of the Yugoslav delegation until we have received the Norwegian delegation's amendment.

Mr. Miller (United States of America) :

I think it will be generally recognised that any views put forward in this preliminary and general discussion are to some extent and to some degree provisional and tentative. It seems to me that, in any international Conference, and particularly in a Conference of this unique character, the representatives of all Governments should have, so far as possible, an open mind. If, at the beginning, we put forward views which are not subject to modification or at least to reconsideration as a result of the opinions expressed by our colleagues, we might well find ourselves committed in advance to disagreement, and that is, I think, the very last thing to be desired.

Accordingly, while I wish to submit some observations on behalf of the Government of the United States of America, I do not wish it to be thought that my Government will not listen with the most profound respect to observations made on behalf of other Governments.

The Chairman has indicated that we have before us for this general discussion the first six Points, and, taken in connection with these, the reserve rules of procedure relate very largely to the form and character of the acts of the Conference.

Various questions are involved. In the first place, what is it that we are attempting to accomplish at this Conference in respect of territorial waters ?

There are two possibilities. The first is to state certain generally recognised principles and leave the whole subject about where it is at present. We might merely draw up some of the generally recognised principles relating to territorial waters, the jurisdiction of the coastal State, the right of innocent passage, the matter of bays, and so on (all of which have been considered in the text-books, in decisions and in diplomatic correspondence), and then leave the matter to further writings, further decisions and further diplomatic correspondence.

The other possibility is to consider those general principles upon which agreement has to a large extent been reached, and in their light to propose formulæ which would make precise and definite, or as precise and definite as possible, the margin of sea, in the objective sense, throughout the world or a large part of it.

It seems to me that we are here rather for the latter purpose ; in other words, that we have to see if it is not possible to establish, by means of the clauses that have been approved, formulæ which would indicate a line between the territorial waters of the coastal States on the one hand, and the high seas or the contiguous seas adjacent on the other.

I quite admit that any such course presents various technical difficulties. I would go further and admit that it may not be possible here and now to solve all those difficulties. It may be that we can only begin to solve them and that we shall have to reserve some for the future. I think, however, that it should be remembered that the process we are initiating here at the first general Codification Conference which the civilised world has ever seen is of necessity a long and a slow process.

It is of the utmost importance that the beginnings of any such attempt should be sound, and it is a great deal more important that those beginnings should be sound than that they should be extensive. We should, I think, adopt as our basis that it is better to do a part well than to do more doubtfully well. Quality, I submit, is more important here than quantity.

This leads me to my second point, namely, the form of the act which might be drawn up. It seems to me that such an act should properly take the form of a Convention. If I have correctly envisaged our task, we are to endeavour to go further into details than do existing rules and principles of international law. We are, if I may put it so, to give them some definite application and some necessary precision ; at least in some respects this is true.

I do not mean to say that everything which would be inserted in a Convention would go beyond the principles and rules of international law as they are now understood. Part of what would be written would be a statement of such rules and principles, but what I may call the general portion and the detailed portion would be so inextricably mingled that it would be impossible to separate them in language ; a conventional document would therefore at once combine the present and the future law.

In the Bases of Discussion before us there are only two matters to which I shall refer.

The first is the breadth of the coastal sea. As regards this matter, the position of the Government of the United States of America is definitely fixed. I cannot state it better than by a paraphrase of an extract from some of the recent treaties of the United States of America in which it is said that it is the firm intention of the United States of America to uphold the principle that three marine miles extending from the coast-line outwards and measured from low-water mark constitute the proper limits of territorial waters. That clause states definitely the position of my Government.

My final observation relates to Basis No. 5, which there will be an opportunity later to discuss in some detail. At present, I wish only to point out that the necessity for the enforcement of the law of the coastal State is obvious, and that the situation of various countries in this respect — the situation of the United States of America, in particular — has led us to conclude certain treaties which are well known to you all and which have given us some opportunity to suppress, or at least to limit, the evil activities of would-be criminals whose position can have no merit in any sense or in any view. It is the opinion of the Government of the United States of America that this ancient and well-established policy might be recognised in a general rule, and I have no doubt that the representatives of at least some of the countries here will take the same view.

I may add that I hope, on behalf of the United States of America, to submit at the meeting to-morrow certain amendments to some, at least, of the Bases of Discussion.

In conclusion, I have only to say to the delegates here, who are now my colleagues and whom I hope I may venture also to call my friends, that it will be our constant hope throughout these proceedings to give the views of the other Governments here represented that same kind and thoughtful consideration which I know in advance will be extended to our own.

M. de Magalhães (Portugal) :

Translation : On behalf of the Portuguese delegation, I should like to make certain preliminary statements on the various questions which appear on the agenda.

I support the French delegation's proposal regarding the definition of the terms to be used in the Convention. The meaning of the words used must be clearly established in the Convention itself.

This work, however, cannot be done before the discussion of the various Bases. If it is found easy to define the meaning of the terms used, as and when they are discussed, that will be very satisfactory. If, however, doubts or discussions arise, I think it would be preferable to leave this work until the end, in order to avoid wasting time and complicating our task, which is difficult and complex enough already.

As regards the nature of the acts to be adopted by the Conference, it already seems clear to me that we cannot confine ourselves to a declaration, and that we must try to satisfy, as far as possible, the existing and essential needs of the various States. As M. Giannini has said, we must try to complete or, where necessary, to modify, the existing rules to a certain extent, as was rightly suggested by the Rapporteur of the Council of the League in his report on the work of the Committee of Experts.

As regards the legal status of territorial waters, I think that that is a matter of State sovereignty, and that we must use the term " sovereignty " in the Convention. Although there are still certain doubts in regard to this term, it nevertheless already exists in an international Convention ; I refer to that on air navigation. Moreover, it seems to me absolutely necessary that we should establish a general principle. We may assume that our Convention will give rise to difficulties and doubts, and it is essential that we should have a general principle as a guide for their settlement. I agree with M. Raestad, however, as to the care required in drafting the text regarding sovereignty.

Dr. Schücking has said that two essential principles result from the work already done. The first is the principle of sovereignty. As I have said, I accept that principle. The second is that of the two zones. I greatly regret that I cannot agree with my colleague on that point. I am in favour of a single zone, and I can advance both legal and practical arguments in defence of my opinion.

From the legal point of view — and in codifying international law it is surely important to follow the rules and principles of law — I say that, if we accept the principle of sovereignty, and if we wish to determine the legal status of territorial waters, we must also determine the legal nature of the rights which States may be granted in the so-called adjacent zone. Basis of Discussion No. 5 provides for control ; Dr. Schücking's draft provided for administrative rights. But what is the legal character of those rights?

Doubts have been expressed on this point by the Committee of Experts, and those doubts are very reasonable. When we speak of measures of control, they are the outcome of the right of sovereignty. Are not States to be allowed the right of jurisdiction? If they are permitted to take certain measures without being granted a corresponding jurisdiction, such measures will be inoperative. From the practical point of view, the two zones will be a source of difficulty in the future.

From the maritime point of view, also, I think it would be desirable to have a single zone, since it would thus be easier for sailors to know which are the territorial waters of the various countries. I will not press this point because, judging from the replies we have received, I am afraid that the principle of a single zone will not be adopted.

On principle, however, I will submit a proposal to the effect that the territorial sea consists of a single zone for all States and for all purposes. It is, I may add, indispensable that the breadth of this zone should be such that all the obligations arising out of navigation, the exploitation of the sea, and so on, can be imposed on States, that States can be granted the rights corresponding to these obligations, and that their essential requirements can be met, more particularly as regards the integrity of their territory. I shall therefore propose a single zone of twelve miles. This may perhaps be thought to be too wide, yet it does not greatly exceed what is contemplated in the Bases of Discussion. In these, a breadth of three miles is contemplated, together with an adjacent zone extending to as much as twelve miles.

As regards the breadth of territorial waters, the Norwegian delegate has said that two rules exist — the three-mile limit and the four-mile limit, which might be termed respectively the younger and the elder. I would venture to point out that there is another — the six-mile limit, which has always been recognised by certain States.

There are thus at least three rules. Our task is not to find a solution which will correspond to international custom — since, as all publicists agree, no such custom exists on this point — but to adopt a rule which will more satisfactorily meet the existing and essential requirements of States.

If a single zone is not adopted, Portugal is prepared to accept a six-mile zone for territorial waters and an adjacent zone for the rights which States may be granted. Portugal cannot, however, accept a breadth of less than six miles for either zone.

I quite agree with Professor Giannini that we must carefully study the question of rights in the adjacent zone.

Basis of Discussion No. 5 speaks of " the control necessary to prevent within its (the coastal State's) territory or territorial waters the infringement of its Customs or sanitary regulations or interference with its security by foreign ships ".

Other questions arise, however, which are as important as, or more important than, these, and which must also be included in this Basis. Professor Giannini has already indicated some of them. If we take, for example, the draft of the Harvard Law School, we find that it speaks of such mesasures as may be necessary for the enforcement within its territory or territorial waters of its Customs, *navigation*, sanitary or *police* laws and regulations. This term " police " is very vague. Professor Strupp, in his well-known and authoritative work, says that the State has police rights in the widest sense within the territorial sea.

If we agree that in the adjacent zone the State also has police rights, the difference between the two zones is surely not very great.

Baron Nolde proposed to the Institut de droit international the addition of the words " the policing of fisheries " in the article of the last draft drawn up by the Institut corresponding to this Basis of Discussion. This proposal was opposed by Mr. Thomas Bard — the only opponent — but was, nevertheless, adopted. I also accept it. If we adopt Basis No. 5, I shall submit a proposal to add the words " the measures necessary to police fisheries ".

If we do not accept the single zone or a breadth of six miles for the territorial sea, I wish, like the Norwegian delegation, to suggest that Bases Nos. 3 and 4 should be combined in a single text. I think we ought not to provide for exceptions in regard to the breadth of territorial waters. If we cannot reach a unanimous agreement upon one breadth, we must place all countries on a footing of equality. Each country may then state which of the three rules mentioned above — three, four or six miles — it will claim for its territorial waters. This option will enable them to maintain the usages already established and to meet their essential needs.

For the moment, I have only to add that I will do everything in my power to help towards an agreement, and that I sincerely hope that the results of our work will satisfy us all, so that this first Conference for the Codification of International Law may, as we all desire, prove a success.

Sir Maurice Gwyer (Great Britain) :

I desire first to associate myself very cordially with the preliminary observations of the delegate of the United States of America. It seems to me essential that, in this general discussion, all the observations which we make should be without prejudice to our ultimate decisions, and that it is only by putting our ideas into the common stock and by ascertaining what is the highest measure of agreement that we are likely to be able to obtain a successful issue to the work of this Committee.

In particular, I venture to suggest that the difficulties which undoubtedly exist in so many branches of this subject should be boldly faced by the Committee, and that no endeavour should be made to conceal or gloss over them in order to reach what might, indeed, be an agreement superficially but which would merely serve to conceal essential differences.

There are two points in this preliminary discussion on which I would like to say a few words. The British Government is in entire agreement with Bases Nos. 1 and 2, and supports the notion of sovereignty over the belt of territorial waters, whatever that belt may be.

It has been said, I think, by the delegate of Norway that this would involve a definition of the expression " sovereignty ". I submit that the meaning of the word sovereignty is not open to doubt, and that by declaring the existence of soverieugty over the territorial belt no difficulties are likely to arise.

It may be necessary to define accurately what we mean by " the right of innocent passage ". That is a matter which will be discussed later when we come to the Basis which deals with that point ; but my view is that, if there exists such a difficulty as the delegate of Norway seems to suppose, its proper solution is to be found rather in an accurate definition of innocent passage than in any attempt to define the expression " sovereignty ".

As regards the third Basis — the breadth of the belt of territorial waters — the views of the British Government are, I think, well known. It is firmly persuaded that the width of the territorial belt is and has always been a limit of three miles, and it would find great difficulty in accepting the view that States are entitled under international law themselves to fix for their own purposes what the belt of their own territorial waters should be. A principle of that kind once admitted would, in my view, produce a state of chaos, and the codification of international law on this subject would go backwards rather than forwards.

Of the Bases now before us, I think Basis No. 5 probably presents the greatest difficulties. The view of my Government is that, whatever rights are exercised, either in fact or as a matter of law, beyond the territorial belt, they are not rights of sovereignty, and I think, judging from the course which the discussion has taken this morning, that that view would meet with the general assent of all the delegates present.

It is, however, clear that the nature of those rights — or perhaps it would be better to use a neutral term and call it " control " — the nature of the control which is exercised outside the territorial belt is very ill-defined and varies infinitely in almost every State. Moreover, the needs of different States for the exercise of this control are widely different.

In these circumstances, it may well be that it is not possible in a single Convention to define what the nature of that control should be and it may be open to doubt. Indeed, whether it ought to be defined in a single Convention at all. On the other hand, His Majesty's Government in the United Kingdom appreciate to the full the difficulties which face coastal States all over the world in the efficient enforcement of their municipal law, and it is willing, and has shown its willingness, to enter into arrangements with other States for the purpose of making that enforcement more effective.

I would go further and say that it is the duty of any State which trades with another coastal State to do all in its power by means of arrangements, conventions or treaties, to enable the States with which it trades effectively to enforce the laws of which the trading State also receives the benefit.

I therefore submit for the consideration of the Committee — the matter will no doubt be discussed at greater length later on — the idea that the true solution of the problem presented by Basis No. 5 may be in the recognition of the duties of States to enter into arrangements of this kind with other States, arrangements which are suited to the needs of those other States and which, as I have said, vary from country to country.

We shall have an opportunity later on of discussing all these Bases in greater detail, and I do not think it is necessary for me at the present moment to go further into them.

I should like to associate myself with the delegates who have previously spoken, and express the hope that all will unite and, by a process of mutual concession and give and take, enable a Convention of some kind — be it wide or narrow — to issue from the work of this Committee, based upon sure and solid foundations.

Admiral Suric (Netherlands) :

Translation : As regards the three points under discussion, the acceptance of Basis No. 1, relating to the sovereignty of the State over its territorial waters, appears to us to be of fundamental importance and most desirable.

As to the breadth of territorial waters, my Government has, for a long period now, accepted a distance of three miles. This is regarded as sufficient and as adequately safeguarding the freedom of the high sea. We can, however, associate ourselves with any effort as contemplated in Basis of Discussion No. 4, to obtain an acceptable solution if it satisfies the Powers which are asking for a greater breadth.

As regards the limit of territorial waters, I think it will be more useful to discuss that point when the other special articles are under consideration.

Lastly, I should like to give my hearty support to M. Gidel's proposal to define various expressions and to adopt a simple, clear and uniform terminology.

M. Gidel (France) :

Translation : Mr. Chairman, I understood that it was intended to ask for an exchange of views on the French delegation's proposal as soon as the text of that proposal had been distributed. I would venture to remind you of this — although I know how closely you always follow the proceedings — because we find that a number of delegations seem prepared to accept the proposal.

M. Giannini (Italy) :

Translation : The question raised by M. Gidel is an important one, but I do not think it can be dealt with until we have reached agreement on the important problems now under discussion, which constitute the substance of any Convention we may adopt, whereas M. Gidel's proposal relates mainly to a question of drafting.

M. Gidel (France) :

Translation : I do not agree.

M. Giannini (Italy) :

Translation : There should be an Article I entitled " Definitions ".

The Chairman :

Translation : It is not merely a matter of drafting. We shall understand each other when the terminology is fixed. M. Giannini has asked that we should discuss the French proposal when we have reached agreement upon the problems raised to-day. In my opinion, such an agreement cannot be reached either to-morrow or the day after. We must have time for private conversations in order to attain, if possible, the important object towards which all our efforts are directed.

Viscount Mushakoji (Japan) :

Translation : I desire to second M. Giannini's proposal. I would urge that the discussion should continue to-morrow on the first six Bases. If we have time, we can then examine the important question raised by M. Gidel.

I wanted to put before the Committee the Japanese Government's ideas on the first six Bases of Discussion, but there has been no time for me to do so to-day, and I should like the Chairman to give me an opportunity to-morrow.

The Chairman :

Translation : The general discussion will be resumed to-morrow morning at 10 o'clock and, when it is closed, we shall begin the discussion of the French proposal.

The Committee rose at 1 p.m.

SECOND MEETING

Tuesday, March 18th, 1930, at 10 a.m.

Chairman : M. GÖPPERT.

7. EXAMINATION OF BASES OF DISCUSSION Nos. 1 TO 6 : CONTINUATION OF THE GENERAL DISCUSSION.

Viscount Mushakoji (Japan) :

Translation : The Japanese Government accepts in principle the rules set forth in Bases Nos. 1 and 2. It considers that it would be better to have a provision to the effect that the coastal State has sovereignty over a zone constituting its territorial waters.

As regards the breadth of territorial waters, the Japanese Government has always maintained the rule of three nautical miles, which is recognised by a number of States in their laws, their practice and their jurisdiction, and in the treaties concluded by them. It is true, of course, that other States have adopted a different rule, but their claims have always been strongly objected to by other States concerned.

Whenever an actual case has arisen, this claim has been rejected by the States whose interests were involved; they refused to agree to a breadth greater than three miles for territorial waters. I need hardly add that the majority of publicists have pronounced in favour of the three-mile limit. The Japanese delegation is therefore of opinion that, when we codify the rules regarding the breadth of territorial waters, the principle we must adopt is to make the breadth as small as is consistent with the use of the high sea, which is so important for all nations.

In the same connection, we consider that no State should be allowed to claim, in virtue of a right of user or a particular geographical configuration or on other grounds, a special zone wider than is permissible under the general rule. Consequently, the Japanese Government cannot agree that States should, by virtue of their municipal law or by a unilateral declaration, be free to fix the breadth of territorial waters for their own purposes at more than three miles.

There are certain parts of the sea where a special rule might, if absolutely necessary, be allowed on account of a particular geographical configuration or of usages recognised by other States, or for some other reason. In such a case, however, the rule should apply to all waters where the same conditions prevail; and this, indeed, is the actual solution contemplated in Bases of Discussion Nos. 8 and 13 (bays and groups of islands). But to attempt to give general recognition to the special position of certain States as regards the breadth of their territorial waters would, in our opinion, be running counter to the fundamental idea of the equality of States before the law.

Further, the Japanese delegation considers it desirable not to allow any State to exercise a particular right of any kind outside its territorial waters. Naturally, States will remain

free to conclude among themselves such arrangements as may seem to them desirable for that purpose if the need arises, but on condition that such special agreements do not involve the creation of exclusive rights for the coastal State in the matter of fisheries, as this would be tantamount to establishing a virtual monopoly of fishery rights.

We cannot recognise that the coastal State may exercise exclusive rights over the high sea adjacent to its territorial waters, as that would be equivalent to admitting that a part of the high sea should be treated more or less as if it formed part of the territorial waters.

M. Meitani (Roumania) :

Translation : At the beginning of the opening meeting, I asked that we should have no general discussion, because I thought it would be better for such a discussion to take place in the course of the examination of the individual Bases. My proposal not having been considered, I must speak to-day in order to put before you my Government's views.

The Norwegian delegation yesterday agreed that a State has a certain right in its territorial waters, but did not explain the character of that right. Is it a right of ownership, or a right of jurisdiction, or a servitude? My Government definitely claims a right of sovereignty over its waters, and, as the Italian delegation has said, it intends to enjoy all the benefits and to accept all the consequences thereof.

As regards the breadth of the waters off the Roumanian coasts, my Government considers that it would be preferable to establish two zones — a zone of territorial waters six miles in width and a contiguous zone, the breadth of which would be fixed by the Conference.

My Government, which warmly welcomes the first Conference for the Codification of International Law, hopes that the various delegations will reach agreement on all points, and that they will bring to a successful conclusion the great work we have undertaken.

M. Makowski (Poland) :

Translation : Some criticisms have been advanced here in regard to the term " sovereignty " which is used on several occasions in the Bases of Discussion. I myself have submitted an amendment substituting for this term one which is less ambiguous. I realise, however, that this question is closely bound up with the French delegation's proposal, which I fully support, and which we shall soon have occasion to discuss.

In point of fact, if we include sovereignty in the terms which require to be defined, and if we succeed in defining it, there will obviously be no objection to retaining this term in our Convention. If, however, we cannot define it, it will have to be replaced by a more suitable term.

As regards the breadth of territorial waters, I cannot give any final opinion until we have defined the breadth and legal status of the contiguous zone, which I should prefer to call the " zone of protection " as differentiated from the " zone of jurisdiction ". If the legal character of the first-named zone satisfies the legitimate interests of the coastal State, the customary distance of three nautical miles for the zone of jurisdiction might be retained; otherwise, it would be essential to increase that limit for the zone of jurisdiction.

Some of our colleagues have dealt with a question of primary importance, namely, the form to be given to the diplomatic Act which is to be the outcome of our work. Is it to be a Convention, a declaration or an Act combining both forms? A reply to this question cannot, in my opinion, be given until we have concluded the discussion on the substance of the question. If we take a decision earlier, it might be premature and unsuitable for the purposes of codification.

M. Spiropoulos (Greece) :

Translation : I have listened carefully to the statements which have been made by various delegations, and I find that, on certain points, differences of opinion exist which at first sight seem somewhat serious. As the delegate of the United States of America has said, however, the opinions expressed cannot and should not have more than a provisional character. I do not think that the delegates who have spoken are definitely bound by what they have said.

The Greek Government will do its utmost to enable an agreement to be reached. But on what basis must we seek this agreement? With your permission I will put before you my Government's view on this question.

We are dealing with two questions of principle — the legal status of the territorial sea and the breadth of the territorial sea.

As regards the first question, my Government has expressed the view that it would be preferable simply to define precisely the rights and duties of a coastal State within the limit of the territorial waters. In other words, my Government does not accept the principle of absolute sovereignty. It prefers a more liberal solution, as it fears that a later Conference for international codification may blame us for being too reactionary. Nevertheless, if an agreement can only be reached by adopting the principle of the absolute sovereignty of a State over its territorial waters as laid down in the Bases of Discussion, my Government will do all in its power to accept it.

As regards the breadth of the territorial sea different opinions have been expressed. Three, four, six and twelve miles have been mentioned.

How are we to reach agreement?

These various opinions are based on a twofold criterion. In the first place, there is the law actually in force. Thus, the delegates of the United States of America and Great Britain have said that the three-mile limit must be accepted because it corresponds to existing law. Other delegates again, such as the delegate of Portugal and, unless I am mistaken, the delegate of Italy, have said that we must consider pratical needs.

The Greek Government thinks that a solution will be found by taking as basis the existing law as well as practical needs. But what is this existing law? I confess I do not entirely agree with the delegate of the United States of America, that the rule of three nautical miles represents existing law.

If that were so, there would be no point in discussing this question at all. I think, however, that that claim may be disputed.

At the same time, we must not forget that the three-mile rule is accepted to-day by the majority of States and is embodied in a large number of international treaties. Accordingly, in the Greek Government's opinion, we must take this rule as our starting-point. Unless we do so, an agreement seems difficult, if not impossible.

As this rule is accepted to-day by the majority of States, we cannot expect the majority to yield to a minority which, though it may, of course, maintain that its claim is justifiable, is still only a minority.

Briefly, according to the Greek Government's view, we must take the three-mile limit as our starting-point, while at the same time agreeing to make certain concessions to the minority.

M. de Armenteros (Cuba) :

Translation : May I put before you the Cuban Government's view on these three questions?

As regards the first, which relates to State sovereignty, we fully agree with Basis of Discussion No. 1. If we do not wish to say " absolute sovereignty " we may at all events speak of the " State's right of sovereignty over its territorial waters ".

As regards Basis of Discussion No. 2, we all agree that the sovereignty of coastal States extends to the air above its territorial waters, to the bed of the sea covered by those waters and to the subsoil.

There remains the third question, which is the most important of all, namely, the breadth of the territorial waters.

I willingly accept the British delegation's view that the limit should be fixed at three nautical miles ; but I consider that this question of the three nautical miles should be taken in close conjunction with Basis of Discussion No. 5, which provides that the control by the Customs, police and sanitary authorities may extend to twelve miles from the coast. It should, in particular, cover the fisheries question, which is of great importance for my own country, with its large fishing industry.

Abd el Hamid Badaoui Pasha (Egypt) :

Translation : In connection with Bases of Discussion Nos. 1 to 6, which we are now examining, two main questions arise — that of sovereignty and that of the limit of territorial waters, together with the contingent question of the adjacent sea.

On the question of sovereignty, relative agreement already seems to exist. Some delegates, it is true, have expressed doubts as to the use in the Convention of the word " sovereignty " to define the rights of the coastal State. I do not think, however, that a State could conceivably refuse to admit that it has sovereignty over its own territorial waters.

Accordingly, the Governments can only be concerned with their rights in the territorial waters of other countries.

On this question, the British delegate, Sir Maurice Gwyer, has pointed out that, in reality, it is not the word " sovereignty " to which importance should be attached, but the servitudes of and the restrictions to that sovereignty.

We shall, therefore, have to examine these restrictions when studying the questions of jurisdiction and of innocent passage. Further, sovereignty in this matter of territorial waters is hardly absolute. It is useless to describe it as absolute, since in reality it is quite relative. Moreover, as the Conventions on aerial navigation already accept the existence of sovereignty in territorial waters, we have not to reconsider that question. We must simply give our attention to restrictions when we come to examine the questions of innocent passage and jurisdiction.

It is rather on the other question, regarding the limit of territorial waters, that agreement seems much more difficult to reach.

Each delegation has taken up its position in this matter, and I think it will be difficult to reconcile the entirely opposite views that have been adopted, namely, that the breadth should be three miles, four miles, six miles and twelve miles respectively.

Nevertheless, I am inclined to think that the question of the contiguous sea may offer ground for agreement and conciliation. M. Giannini said yesterday that, if six miles were not accepted, control would have to be extended between the three-mile and six-mile limits or between the three-mile and some other limit.

Three miles constitutes the minimum accepted by all. The whole question, therefore, seems to turn on the breadth beyond three miles, as some claim four, others six and others twelve miles.

There may perhaps be some means of knowing what each of the States opposed to the three-mile limit are asking beyond that limit. The questions which may be considered in this connection are jurisdiction, the exploitation of the wealth of the sea, fishery rights, the policing of fisheries, coasting trade, Customs supervision and sanitary supervision.

If we bring our discussion to bear on rather more concrete questions and ignore mere theories, we might consider almost individually what the States are claiming beyond the three-mile limit. Do they claim a right of jurisdiction or only the right to fish, or to police fisheries? We all seem to agree as regards the questions of Customs and sanitary police. To judge from the Bases of Discussion, we seem likely to reach agreement on all these questions. It is mainly the other questions which will give rise to difficulties, and I propose that we shift the discussion from the field of theory to that

of practical examination and compromise, and ascertain what each State claims beyond the limit contemplated, whether in the matter of jurisdiction or in that of the right of fishing, or the right to police fisheries or, again, the exclusive right to the coasting trade. We should thus see whether the various points of view can be brought closer together, and as a result of that discussion we may see our way to solve the problem.

As regards the adjacent zone, it is proposed that the method of private inter-State Conventions should be followed. The Japanese delegation has accepted this proposal. For my part, I think that would be abandoning codification at the very start, because, unless we reach agreement as to the breadth of the territorial waters themselves, we cannot attempt to deal with the question of the adjacent zone. In fact, the starting-point of this adjacent sea would be undetermined until we had fixed the limit of territorial waters.

It is, therefore, absolutely essential that we should begin by settling the question of the limit of territorial waters, and in my view the only means of doing so is to utilise the device of the adjacent sea ; otherwise, we shall not succeed in effecting any codification on this subject. The question of the adjacent sea must therefore be settled here, and by a general agreement.

M. Sitensky (Czechoslovakia) :

Translation : As delegate of Czechoslovakia an enclaved country with no coasts, I may perhaps be told that I am hardly in a position to give an opinion on the question of territorial waters. I think, however, that this question may prove of great importance, not only to countries with a sea-coast, but also to countries with no coasts, since the latter also have the right to engage in maritime navigation.

The Bases of Discussion begin by laying down the principle of the sovereignty of the coastal States over their territorial waters. This sovereignty is then limited in order to allow freedom of maritime navigation, so that we may justifiably ask whether we can still speak of sovereignty in the strict sense of the term.

Since our task is to regulate the conditions governing maritime navigation in a certain belt of sea, and as vessels will still, to a certain extent, be regarded as forming part of the territory of the country whose flag they fly, it would perhaps have been more correct to take as our starting-point, not the principle of the sovereignty of the coastal States, but the opposite principle, that of the freedom of the seas, the freedom of maritime navigation. This freedom of navigation might then be limited by granting to the coastal State within a certain zone, which would be called the territorial waters belt, such rights and powers as it requires to safeguard its security. Such powers, when exercised over the actual territory of a State, certainly flow from the sovereignty of the State ; but it is doubtful whether this body of rights over a part of the sea can be called rights of sovereignty. If, however, we wish to employ the term " sovereignty " for the body of powers held by the coastal State, I think we should be very careful, in fixing the limits of this sovereignty, not to invalidate the principle of the freedom of the seas.

If, on the one hand, we accept the principle of the sovereignty of the coastal State over its territorial waters and if, on the other, we wish to safeguard the freedom of maritime navigation — and I assume we do — I think that the territorial waters should be as narrow as possible, consistent with the safeguarding of the proper interest of the coastal State. This breadth should, I think, be the same for all territorial waters.

As regards the question of the form to be given to the Acts of the Conference, I think that, in the case of the non-coastal States, it would be better to adopt that of a declaration. At the same time, I realise that, in the common interest of the majority of States, the form of a Convention is much more practical. In that case, however, it must be borne in mind that non-coastal States are in a different position from coastal States, and that the former cannot have the rights and obligations arising out of the Convention in respect of coastal States, but only the rights and obligations arising out of that Convention in respect of maritime navigation.

Sir Ewart Greaves (India) :

I should, in the first place, to say one word about the territorial limit. Everyone who has listened to the discussion of yesterday and to-day must be conscious of the fact that it is very difficult to say that any clearly defined limit exists which would be recognised by any court, such as the Permanent Court at The Hague, for example.

There is no doubt that the majority are in favour of a three-mile limit ; but, as the Norwegian delegate reminded us yesterday, the historic claim put forward, on behalf of Norway and Sweden, to a four-mile limit is prior in date to the three-mile limit, even if it has never been admitted.

As you know, a six-mile limit has been urged by others, and even a twelve. I think Portugal has now discarded the eighteen-mile limit and now asks for a twelve-mile limit.

In face of all these divergences, it is very difficult to say that any definite rule exists which would be recognised by any court of competent jurisdiction which had to deal with a matter of this kind. What is the result ? We want, if possible, to reach an agreement that will be fair, reasonable and equitable to the largest number of countries of the world. The lowest limit that has been put forward

is a three-mile limit, and I think that, if possible, we have here to deduce some principle upon which our discussion should be based.

The existence of any territorial limit — necessary as some territorial limit is — must be a derogation from the rights of other countries so far as the coastal State is concerned. I venture to think, therefore, that the general principle which should govern our discussions should be that the limit should be as small as possible. Speaking on behalf of the Government of India, I have to say that that Government would prefer a three-mile limit.

I think that, if we bear that general principle in view, the burden will lie heavily in our discussions during the next few weeks on those who claim that a larger limit than the minimum of three miles should be generally in force.

As the delegate from the United States of America reminded us yesterday, we are here with open minds to hear the arguments put forward on behalf of the various countries represented at the Conference, and we shall listen with the greatest attention to the particular arguments that are put forward on behalf of Norway and Sweden for any addition to what I venture to think should be the minimum limit of three miles. We shall listen with great consideration, I hope, and with great attention to any arguments they have to urge in favour of a larger limit than a three-mile limit in certain cases.

The Italian delegate suggested yesterday one reason why a larger limit than three miles should be adopted, namely, the fact that, if a six-mile were adopted, there would not necessarily have to be a second zone which may be called a police zone. We shall listen to his further arguments in support of a six-mile limit; but I venture to urge on the Committee that the governing principle which we should follow in a matter of this kind is to fix as small a limit as possible, because there should be as small a derogation as possible from the rights of other countries so far as these territorial waters are concerned.

Just one word upon what has been called, for want of a better term, the police zone. The Government of India is interested to some extent in the existence of a wider zone where certain powers should be exercised. The extent of that zone and the nature of the rights to be exercised in respect of it are matters that we shall be discussing in detail during the next few days; but I am sure they are matters in regard to which, with general goodwill, there will be no difficulty in reaching an agreement. I, however, cordially agree with the British delegate that it is very necessary that those rights in respect of the police zone should be defined, as well as such matters as innocent passage.

I have no doubt that, in the course of our proceedings, it may be necessary to define sovereignty in some way, if it is possible; though I deprecate a long discussion in view of the multitudinous volumes that have been written on questions of this kind. We should not occupy our time with discussions of that nature unless it is absolutely necessary.

The definitions that the delegate for France thinks must be made in respect of territorial waters and others may be necessary at some stage; but, in my view, the important thing is that early in our deliberations we should, if possible, arrive at principles which are to govern the Convention so far as the limits of territorial waters and the police zone are concerned. The questions of definition are, I think, minor matters, and it would be a pity for the energies of this Committee to be in any way dissipated in its early stages by discussions upon definitions, however necessary they may be at a later stage.

M. Lorck (Denmark):

The Danish delegation wishes to state that it is able to accept the points now before the Conference, but would like to draw attention to a minor matter which is of some importance in the Danish waters. I refer to the protection of the fry and young fish in some areas.

In Basis of Discussion No. 5, reference is made to the particular zone adjacent to the territorial waters in which it is permitted to exercise control to prevent, within the territory or territorial waters, the infringement of its Customs or sanitary regulations or interference with its security by foreign ships. We should like here to insert the words "fry-protection" after the word "Customs". The proposal will be forwarded to the Chairman.

I should finally add that the Danish delegation seconds the proposal of the Polish delegate to call the zone adjacent to the territorial waters "the protecting zone" or "zone of protection".

Mr. Green (Irish Free State):

On behalf of the Government of the Irish Free State, I desire to say that my Government agrees with the Bases of Discussion Nos. 1 and 2. In saying that, it is understood that the word "sovereignty" in those Bases of Discussion is, of course, subject to such decisions as may be taken on subsequent Bases of Discussion relating to peaceful passage and other limitations of sovereignty. These, I take it, we shall define quite clearly in the subsequent clauses of whatever instrument we may ultimately prepare.

In regard to Basis of Discussion No. 3, I desire to say that my Government agrees that

the breadth of the territorial waters should be three nautical miles. I agree with our Greek colleague that we should take three nautical miles at least as the starting-point of our discussions. This seems to be a measure which is very generally accepted, for which there is a large measure of support, and we are then free to consider those very important interests outside the three-mile limit which were put before us clearly yesterday by our United States colleague. The Danish delegate has this morning drawn attention to another interest, namely, the protection of the fry of fish, which is of course of special importance for countries where there is a wide extent of shallow water adjacent to the coasts.

If we start, then, with the three-mile limit as a basis of discussion, we may consider how far there is a general identity of interests outside that limit which may make it desirable to agree to its extension for all purposes; or, on the other hand, whether special provisions for a marginal zone will be necessary in order to accomplish what we wish to do.

Basis of Discussion No. 6 deals with the definition of the method of measurement. As regards the decisions which we may adopt in regard to that matter, I would like, if I may, to put in a plea for those who later will have to make use of our decisions.

We here are looking at the matters which we have to discuss from the point of view of legal experts. I would like to put in a plea for the fishermen and the navigators of small coastal vessels who will afterwards have to obey the decisions which we take. In all our decisions, therefore, we should endeavour to keep before our eyes the desirability of simplicity. Above all things,we need precision in our definitions; but simplicity is not, I think, inconsistent with precision — in fact, the simpler our decisions are the more precise they will, in all probability, be found to be.

M. Rolin (Belgium):

Translation: I only wish to say a few words regarding Basis No. 1.

Contrary to the opinion expressed by certain of our colleagues, we cannot, unfortunately, disregard questions of form if we are desirous of effecting some measure of codification.

I think that Basis of Discussion No. 1, as proposed, is perhaps open to the objection of being incomplete. It speaks of State prerogatives. The aim towards which we are advancing is the complete assimilation in principle of the territorial sea with territory itself, subject to certain reservations and with certain restrictions, namely, that the State would possess full rights within the belt of territorial sea, except in so far as such rights are prohibited or freedom is limited by our Convention.

In the first place, I think it would perhaps be desirable to affirm this similarity of status between the territorial sea and the territory, and to say that, subject to certain reservations and within the limits to be laid down in the Convention, the territorial sea forms part of the territory of the State.

As regards the term "sovereignty", there is one thing which I note. A number of objections have been raised, yet I am firmly convinced that this is a mere matter of form, and that we are all agreed as to the purport of the Basis as submitted to us. The State possesses over the territorial sea full legislative, administrative and judicial powers within the limits to be laid down by the International Convention. That is what we all want to say.

Some of our colleagues have tried to find more exact terms. I personally feel loath to use this term "sovereignty". It is, of course, a term which traditionally belongs to international law. But international law is, at the present time, passing through a period of far-reaching transformation, and all those of our colleagues who have taught this subject have, I am sure, often denounced, in connection with the notion of responsibility, the abuses allowed by and the weaknesses of the old international law, just as they have denounced this notion of sovereignty, which politicians used to interpret in a manner wholly incompatible with international law.

Sometimes — though rarely — the legal force of international engagements was even called in question. However, throughout the nineteenth century — with rare exceptions — the State more commonly claimed the power to judge for itself as to the limit of its own obligations. That was quite in accordance with the etymological meaning of the word, a "sovereign" being a supreme authority not subject to control of any sort, either from within or from without.

Then I note another objection. If we intend to codify, we must be very careful to ensure, as far as possible, that the terminology to be embodied in international law is uniform. In other words, we must not use different terms for the same thing; arbitral tribunals, such as the Permanent Court which meets at The Hague, must not be faced with terms which are practically synonymous and in which, perhaps, they would try to discover differences.

It is true that the word "sovereignty" appears in certain post-war Conventions, and more particularly in the Convention regarding Aerial Navigation. But I find that, in the Covenant of the League, which has been signed by a large number of the States represented at the Conference, an attempt seems to have been made to avoid the inconveniences which I have just pointed out by omitting any reference whatever to "sovereignty".

Article 15 speaks of the *compétence exclusive* or "domestic jurisdiction" of States. By that term it was intended to convey — I do not think I am mistaken — precisely what we wish to indicate to-day by the term "sovereignty", namely, the full powers which cannot be disputed by foreign States and are not

subject to any control. Within certain limits, a State cannot allow any decisions it has taken or acts of its subordinates to be called in question. That, I think, is what is meant by " domestic jurisdiction ". Is there any serious reason why we should discard this term, which already appears in the fundamental provisions of the international judicial body which would have to settle any differences arising out of the application of this Convention?

That is the question I wanted to ask; nevertheless, I should like to add a reservation. I think that, whatever the decision we take or the preference we show, the minority will undoubtedly accept with a good grace the term which receives the support of the majority. We must not forget, however, that the First Committee itself will be faced with precisely the same difficulty. Its first Basis also speaks of " sovereignty " in connection with nationality. I do not know what decision it will take or whether the same objections will be made. In any case we must, as regards the form of our codification, make the same choice; or, if our choice proved to be different, we must reach an agreement. At all events, the Drafting Committee constituted by the Bureau of the Conference would have to try to decide on a single term.

M. Goicoechea (Spain):

Translation: The Committee has two main questions to settle. The first relates to the legal nature of the rights exercised by coastal States over the territorial sea. I regret that I must oppose the French delegation's proposal for a precise indication of the legal terms employed in defining the nature of the rights exercised by coastal States. All my inclinations as a jurist impel me to support the French delegation's thesis, but all my experience of international politics leads me to the opposite view.

In my country, there is a saying that " everybody is a lawyer unless the contrary is proved ". I think that everybody is a bit of a lawyer and in favour of defining legal terms; at the same time, I think that over-exactness in this matter would here involve the very serious risk of jeopardising the possibility of an agreement among all the different countries.

We are faced with two equally certain facts — first, the wide divergence of doctrine, and, secondly, the real position, which fortunately is less complicated than the divergences of doctrine. We do not agree as to what is the legal nature of the rights exercised by the coastal State over territorial waters. There is no general consensus of opinion as to the name to be given to those rights. The term " right of supervision " is supported by the highest authority on international law, Hugo Grotius. All publicists give their opinion on this matter. One eminent French jurist, M. de Lapradelle, has put forward the idea of League of Nations ownership of the territorial sea. Another eminent French jurist, M. Fauchille, calls the right of the coastal State over the territorial sea a " right of conservation ".

The term " sovereignty " is employed in the Convention on Aerial Navigation signed at Paris on October 13th, 1919, by all the States represented at this Conference. The Institut de droit international hesitates between the word " sovereignty " and the rather more modest term " right of sovereignty ": or, again, " a right of sovereignty ". The same uncertainty exists in all the preliminary drafts drawn up at the instance of the League of Nations — that of Dr. Schücking, the German jurist, that of Mr. Dudley Field, that of M. Arnaud, and that of M. Pessoa, the eminent Brazilian jurist who is now a judge of the Permanent Court of International Justice at The Hague.

I therefore think it would be extremely dangerous to press for undue precision in the use of legal terms. For my part, I would prefer the word " sovereignty ", because it is used in the Aerial Navigation Convention of 1919 and in the draft prepared by the Institut de droit international, and also in all the preliminary drafts prepared on the recommendation of the League of Nations.

Despite all these divergencies of doctrine, we must take into account one fact — that all States exercise the same rights over territorial waters. Let us confine ourselves to noting this fact and we shall easily reach agreement.

The second question relates to the breadth of territorial waters. I cannot accept the Greek delegation's statement that the majority of countries have adopted a breadth of three miles. To-day, indeed, I read in the work of a distinguished jurist, a judge of the Permanent Court of International Justice, that only three countries, I think, have unreservedly accepted the three-mile limit, namely, Great Britain and the British Dominions, Japan and the Netherlands. The other countries provisionally accept the three-mile limit, but with reservations similar to those expressed by the United States. The latter country accepts the three-mile limit, but all its Customs decrees and all the treaties signed for the suppression of the smuggling of alcoholic liquors provide for a four-mile limit.

Spain, Yugoslavia, Roumania and the Baltic countries, which signed the Convention of August 19th, 1925, for the suppression of smuggling in alcoholic liquors, have accepted a limit other than the three-mile limit. I do not speak either of Sweden or Norway. The Spanish-American countries, which have inherited the tradition of Spanish law, signed, with Spain and Portugal, at the Madrid Congress in 1892, an agreement establishing a breadth of six miles. This was based on technical considerations, as a breadth of three miles would not include parts of the sea sufficiently deep to allow edible species to live in it.

The same uncertainties exist everywhere. A distinguished British jurist upheld this six-mile limit. Japan has accepted three miles, but the Japanese branch of the International Law Association favours the six-mile limit. What are we to do in view of these facts ? The best course, I think, would be to allow the breadth of the territorial waters of each country to be fixed by its municipal law. In my opinion, such a solution would be acceptable to all countries.

Let us not attempt too much. The blue of the sky is reflected not in the swirl of the cataract, but in the calm waters of the lake.

Viscount Mushakoji (Japan) :

Translation : I merely wish to refer to what M. Goicoechea said regarding the breadth of territorial waters. I have here the draft resolution prepared by the Japanese International Law Association in co-operation with the Japanese branch of the International Law Association with a view to assisting the codification of international law envisaged by the League of Nations resolution of September 1924. Article 1 states in regard to territorial waters :

> " The littoral waters of a State extend seawards for three marine miles measured from low-water mark along the coasts of its territory."

That is the opinion of the International Law Association of Tokio and of the Japanese Government.

M. Leitmaier (Austria) :

Translation : I am very grateful to my Czechoslovak colleague for having spoken. He was the first to state the point of view of a country having no sea-coast. Obviously, our work is not of such importance to those countries as to maritime countries. For that very reason, however, having no particular interests to safeguard, we are in a better position to devote ourselves wholly to the task of conciliation which is so essential for the accomplishment of our work.

It is in this connection that I venture to speak. I should like to say, in the first place, that I was greatly struck by the justness and wisdom of the Egyptian delegate's remarks. It seems to me that, if we wish to achieve something, we must find some ground on which there appears a possibility of agreement. Accordingly, I venture to propose that we close the discussion on Bases Nos. 1 and 2 as soon as our Rules of Procedure allow. I suggest that we then take a decision on the French proposal, to which I personally am very willing to agree. We might thereupon begin the discussion of the next Bases, but we will resume the present discussion when time and circumstances seem to render it possible to reach an agreement.

M. Giannini (Italy) :

Translation : I should like, in response to the request of several delegations, to show that the Italian delegation's proposals are in the nature of a compromise.

I wish, first of all, to point out that some countries have the advantage of a uniform geographical structure with uniform maritime requirements, and therefore a single breadth of territorial sea. That, however, is not the case with all countries. I need not, I think, review Italy's particular situation again here. The requirements of the territorial sea in the Adriatic are not the same as in the Tyrrhenian Sea or in the Ionian Sea. If you further recall the particular situation of our colonial seas, you will agree that requirements cannot possibly be said to be uniform as regards the breadth of territorial waters.

With a view to a compromise, we have struck a mean, taking into account all the aspects of national life, and for that reason the Italian delegation asks for a limit of six miles.

I should like to add that it is useless to speak of a traditional three-mile limit. Others may reply that their traditional limit is four miles, others twelve miles and others eighteen miles. These figures show that six is a satisfactory mean, having regard to actual present-day requirements.

Two main considerations must be taken into account — the exploitation of the subsoil and the exploitation of the breadth of territorial waters for purposes of air navigation. We must remember that territorial waters must be broad enough for air manœuvres.

Further, if this limit is restricted, an unpleasant situation will be created for the population working on the coast. If you bear in mind these requirements of air navigation and the exploitation of the subsoil, you will readily understand — quite apart from any historical factors — that they merit full consideration. To that we must add police requirements, and I use the term "police" in the widest sense, to include Customs, public security, fisheries, etc. As regards this particular aspect, a limit must be fixed which will meet all national requirements. Accordingly, we must first of all find what breadth of territorial sea will satisfy every aspect of national requirements.

Then there are the international requirements. We have all long been familiar with the various proposals submitted and examined up to the present — proposals for breadths of three, four, six, twelve and eighteen miles. If we wish to reach an agreement, we must find a compromise taking international requirements into account without affecting the fundamental requirements of the various individual States. How can this be done?

As regards the freedom of maritime navigation, there is the Barcelona Convention. We shall not find it very difficult to agree upon the principle laid down, since the States represented

here signed and adopted the Barcelona Convention. We must, therefore, find a limit to the second contiguous zone, because, as I have already said, if we begin by establishing a very narrow first zone, we shall be obliged to make the second zone much wider, and we shall thus reach a result quite contrary to what is desired. On the other hand, if we agree upon the six-mile limit, several problems relating to the second zone need not be considered further.

In essence, the question before us is that of sovereignty, which has been raised more than once. M. Rolin seems to have a particular dislike for the problem of sovereignty, but I find it difficult to understand his misgivings. The Paris Convention of 1919 contains a very precise code of provisions regarding sovereignty. It solves the sovereignty question in a very satisfactory manner.

The principle of sovereignty must dominate the whole Convention with which we are now dealing. If we are to reach an agreement, that agreement must benefit all. We want to reach an agreement not simply for the sake of saying that we have come to an understanding, but in order to show that we really have considered the requirements of maritime navigation in our work. I therefore beg all my colleagues to regard what I have said as constituting a compromise, as far as the particular requirements of Italy are concerned, with due allowance for any international consideration and the general benefits which may be derived therefrom.

If we wish to reach some definite agreement, we must all give evidence of our conciliatory attitude. To that end, each one of us must contribute towards a general understanding, and the Italian delegation considers that it has done so. I ask the Committee to deal with the problem on these lines.

The Chairman :

Translation : There are no more speakers on my list. The general discussion of Bases Nos. 1 to 6 is therefore closed.

We have heard all the representatives of the different views that are held in this matter. All divergencies have been carefully explained, a fact which has been very useful because we cannot reach agreement unless each knows where the others stand.

All the speakers have revealed a desire to reach an agreement, and evidence of a tendency towards a compromise is already discernible.

Let us give this tendency time to gather force.

We must now consider how we propose to carry on our work for the next few days. I personally would suggest that we take Basis No. 1 and combine the study of the rights of the sovereign State with that of the servitudes and the limitations on those rights ; in other words, with what is covered by the chapter entitled " Foreign ships passing through territorial waters ", including Bases of Discussion Nos. 19 to 24.

I would suggest that, before beginning the study of these questions, we examine the French proposal. I regret that, on this point, I do not agree with the Vice-Chairman and certain other speakers, but I think that the question of terminology is of very great importance, and I do not share the apprehension that this discussion will give rise to endless debate. If, contrary to expectation, that danger arises, I am sure that the French delegation will be the first to avert it.

Does the Committee agree to proceed as I have suggested?

Viscount Mushakoji (Japan) :

Translation : I should like to say to the French delegate that I have examined the document he has submitted to us, but I feel it would be much more useful if we had the full French proposal, so that we could examine the question in detail. I should be grateful if M. Gidel would draw up his full proposals and submit them to us to-day.

M. Gidel (France) :

Translation : The present proposal is complete in itself, and the French delegation does not intend for the moment to add anything to it. Our delegation reserves the right, however, to put forward, in the course of the discussion, such amendments as it may consider desirable.

The French delegation proposes to explain briefly at the beginning of the next meeting the reasons which prompted it to submit the proposal now before you. I am sure, therefore, that the Japanese delegate will be fully satisfied by the oral statement which will be made — if the Chairman agrees — at the beginning of the next meeting.

The Chairman : Does the Committee accept my proposal regarding our method of work?

The proposal was adopted.

The Committee rose at 12.30 p.m.

THIRD MEETING

Wednesday, March 19th, 1930, at 10 a.m.

Chairman : M. GÖPPERT.

8. QUESTION OF THE TERMINOLOGY TO BE USED IN THE COURSE OF THE DISCUSSION : CONTINUATION OF THE DISCUSSION ON THE PROPOSAL BY THE FRENCH DELEGATION.

M. Gidel (France) :

Translation : The object of the proposal which the French delegation submitted at the first meeting is to render our subsequent work as clear as possible. A number of delegations fully understand our proposal already, and are prepared to support it. That help is most valuable to us. I must, however, give a few verbal explanations as to how we consider that this proposal can contribute towards clearness in our work and accordingly promote its progress.

Words must be no more than the servants of thought ; they must not dominate it, or betray it, or lead it astray. Accordingly, we must take certain precautions as to their use.

When I consider the Bases of Discussion, I find that the fundamental expression " territorial waters " is used there in two different senses. Take, for example, the heading of Bases Nos. 3, 4 and 5 : " Breadth of the Territorial Waters ". Here " territorial waters " mean the " territorial waters " referred to in Basis No. 3, the breadth of which it is proposed to fix at three miles ; and, at the same time, both the " territorial waters ", in the strict sense of the term, and the adjacent waters, referred to in Basis No. 5. Thus, within a few lines, this term is used in two different senses.

I had the great pleasure this morning of examining a proposal by the United States delegation, and of noting that that delegation also was struck by this need for precision in regard to certain terms, more especially this fundamental expression. I repeat that here is a term which, at an interval of a few lines, is used both in a generic sense, indicating all the zones with which we have to deal, and also in a special sense, indicating a particular zone.

When the Vice-Chairman, in his speech yesterday, referred to the Treaty of Helsingfors on the smuggling in alcohol, he spoke of territorial waters in the sense used in the heading, but not in that of Basis No. 3 ; so that, even when I heard, much to my regret, that the Vice-Chairman was not prepared to accept our proposal, I was to some extent consoled, because his very remarkable speech itself afforded me a good opportunity of indicating the desirability of our proposal.

I could give many examples. The heading, " Breadth of the Territorial Waters ", applies both to the territorial waters themselves and to the " adjacent waters ". If we take the next heading, " Limits of the Territorial Waters ", we find that this term applies only to territorial waters in the strict sense. Thus, the terminology we are to use very evidently requires to be settled. It matters little exactly how we settle it. I feel sure that, if we exchange views on the subject, we shall easily reach a solution.

We might, perhaps, starting from the landward side, speak of inland waters, then of territorial waters (in the strict sense), and, lastly, of adjacent waters. Can any other terms be suggested? In my opinion, that is a subsidiary question. What is important is that we should know what we mean, so that the terms we use are not liable to be misunderstood.

The work we have to do here — of this we are all convinced — must be sincere and free from ambiguity. It must be sincere, because we do not wish to put forward proposals that merely have the appearence of solutions or, worse still, that are fallacious. We want to find real solutions. It is essential that our work should be clear, because we want the text we eventually draw up to prevent difficulties if possible, or, if difficulties arise, to be of use in solving them. We certainly do not want the text itself to create difficulties or uncertainty. We must, therefore, make a special point of defining the basic ideas on which we are working, so that, ultimately, the very accuracy of the terms we use will compel us to undertake their legal analysis.

This is what the French delegation asks the Committee to do ; not to produce a few bald dictionary definitions, but to carry out a legal analysis on a wide scale enabling agreement to be reached on the status of each of the zones we may have to consider.

On what points should this legal analysis be brought to bear? Admirable work in this field has already been done, thanks to the collaboration of the Governments and of the Preparatory Committee. In the Committee's questionnaire, the replies of the Governments and the Bases of Discussion, four zones are distinguished — inland waters, territorial waters in the strict sense, adjacent waters and, lastly, the high sea.

In our opinion, we have not for the moment to indicate the limits of these zones, or to

deeide on any particular breadth. We have primarily to reaeh agreement as to what we mean by these zones and thus ascertain exactly their legal status. The Polish delegation has made quite elear the importance of thus determining their legal status. It points out that, if it is decided that sueh and such rights are eomprised in the legal status of such and such a zone, some of the Governments may change their views as to the breadth of the various zones. I have also been greatly struck by the way in whieh this question has been developed — on different lines but in the same sense — in the admirable statements submitted by the Cuban and Egyptian delegations.

Consequently, this determination of the legal status of the zones must logically preeede any attempt to fix their actual breadth. We ought not to eneounter any serious difficulty in determining this legal status.

I think we shall fairly soon reach agreement as regards inland waters. Aeeording to all publieists, they are assimilated to State territory. Are we to study the question of the status of vessels in these waters? Or, if we study that question, shall we have to incorporate the result of our work in the Aet whieh we draw up? Or, on the contrary, ought we to reserve this point and embody it in a supplementary agreement to the Statute of Maritime Ports? Those are important questions on which we must exchange views later.

Territorial waters, in the striet sense, eonstitute the belt of water eomprised between the inland waters on the one side and the adjaeent waters on the other.

You heard the very interesting views set forth the day before yesterday by the delegates of Norway and Great Britain, both of whom strongly emphasised the importance of the question of innocent passage in determining the legal status of this zone.

It is, indeed, a fundamental question, an idea which it is most important to define. In order to determine the legal status of these zones, in order to determine fully the status of territorial waters, two methods have been proposed, and it seems possible to combine them. On the one hand, we may affirm the principle of State sovereignty, by whatever name it may be ealled ; and, on the other, we may proeeed to the examination which the Norwegian delegate asked you to carry out regarding the different practieal applieations of this prineiple in these territorial waters.

Next will eome the adjacent zone. Its legal situation is appreciably different from that of the territorial waters zone in the strict sense. In this ease, the principle is no longer that of the sovereignty of the coastal State. That State only enjoys speeial, limited and ineomplete rights for partieular purposes.

The day before yesterday I was listening with the greatest interest and attention — as indeed we all were — to the very cogent observations made by the head of the Italian delegation, and, when I heard him eonnect the question of air navigation with that with which we are dealing, I wondered whether, since there is an air-space whieh we may, for short, term territorial, we might not conceive of the idea of an air-space above the adjacent waters, which, also for short, I will venture to call the " adjaeent air ".

Views differ as to the legal significance of the coastal State's right of control and right of supervision over the adjacent zone, and also perhaps as to the manner of enforeing those rights. Some delegations favour the adoption of a general principle, whilst others appear to prefer the question to be left for settlement by bilateral conventions.

What is not disputed, however, is the actual need for this right of control.

Lastly, after the adjaeent waters comes the high sea, in regard to which we have heard an admirable statement, based on lofty ideas, submitted by the delegate of Germany.

These, then, are the four areas reeognised in our preparatory work and in the Bases of Discussion which have been submitted to us. They indieate the limits of our diseussions with a view to ascertaining the legal status of eaeh area.

The classification ean, of course, be altered. Some of the delegations may prefer another method of division, sueh as a division of the four areas into two groups. The high sea group would comprise the high sea itself and the adjaecnt zone, and the marginal or coastal waters group would comprise the marginal waters themselves and the so-ealled territorial or inland waters. That is of little importance ; in the French delegation's view it is a mere matter of detail.

The point to which the French delegation attaches particular importance is that, for the time being, we should strictly avoid all discussions relating to distanees and should endeavour to determine the legal status of each of these areas submitted to us in the preparatory work as the solid bases for our discussions.

We are making this proposal, not simply with a desire to find where the members of this Conference stand on common ground or to show where their views are identical, but also because logieally — and I would refer to the Polish delegate's observations — this is a task whieh must precede all the others.

I feel sure that, when we have accomplished it, it will be found that many views which at present appear to be at variance can be reconciled. At all events, that is my firm belief.

The French delegation is glad to be in a position to accept unreservedly whatever rules

may be adopted here as being best suited to meet the legitimate needs of the different countries.

The French positive regulations are very simple and very adaptable. The number of our texts on the subject is very small, and none of them lays down any hard and fast system of rules.

In conclusion, I should like to express the heartfelt and confident hope that, with the goodwill by which we are all animated, our work in regard to the waters with which we are concerned will result in a body of rules which can be accepted by all the Governments represented here.

M. Spiropoulos (Greece) :

Translation : The scope of the first part of the French delegation's proposal is fairly general, and, when I read it I thought that the French delegation was suggesting that we should define practically all the terms occurring in the Bases of Discussion. If that were the French delegation's desire, I am sorry I could not associate myself with it. I think we cannot define in advance all the terms used in the Bases of Discussion. If I have rightly understood what M. Gidel has just said, however, the French delegation really contemplates the definition of some of the terms which are used in the first Bases of Discussion and which have only a technical value.

The Bases of Discussion contain terms of a purely legal nature, such as " sovereignty ", and we must either simply accept them or refuse to embody them in the Convention. In my opinion, we cannot define them. I understand, however, that the French delegation wishes us to define certain purely technical terms, so that we may be quite sure that we understand each other when we are speaking, for example, of the " territorial sea " or the " adjacent sea ". This proposal seems to me, not merely very useful, but absolutely necessary, and accordingly the Greek delegation supports it.

The Chairman :

Translation : I understand the French proposal to mean that, for the purposes of our discussion, we should define these four terms without in any way prejudging the question whether a zone adjacent to the territorial sea is to be recognised as having a special regime. The four terms are as follows : inland waters, lying within the frontiers of the country ; territorial waters, lying between the inland waters and the high sea ; then, in the high sea adjacent to the territorial waters, an adjacent zone ; and the high sea itself.

If I may express my own opinion, I would add that, for the purpose of our discussion, it would be desirable for us to accept this proposal.

Sir Maurice Gwyer (Great Britain) :

The British delegation fully accepts the proposal which has been explained to us this morning by M. Gidel. It seems to me a necessary proposal and one which is full of logic and good sense. It does not matter at all what name we give to the various conceptions we are going to discuss ; but it is absolutely necessary, if we are to make any progress, that we should all call the same things by the same names, and that, I understand, is what M. Gidel suggests we should do.

There is only one reservation which I wish to make, and I think the Chairman has already drawn attention to it. There are delegations present who would not, I think, be prepared to admit, at this moment at any rate, that the adjacent waters *(eaux contiguës)* have any juridical status at all ; but they exist in fact and, for the purposes of our discussion, it is essential that we recognise that fact. For these reasons, I think that the Committee ought to accept unanimously the proposal which the French delegation has laid before us.

M. de Armenteros (Cuba) :

Translation : I am addressing M. Gidel rather than the Committee itself, and I wish to thank him first of all for his very important statement. I was the first to support his proposal when he submitted it the other day, and I will not make any observation on it now. I will only make a suggestion, namely, that we use the term " territorial sea " instead of " territorial waters ". The idea of a territorial sea seems to me clearer than the term " territorial waters ".

Dr. Schücking (Germany) :

Translation : The terminology of the draft produced by the Harvard Law School would seem preferable, as it employs the term " territorial waters " to denote all belts under the sovereignty of the coastal State ; nevertheless, I think we should do better to accept the terminology proposed by the French delegation, as we shall thereby be following the tradition of international law. The term " territorial waters ", in the restricted sense used in the French proposal, already exists in the thirteenth Hague Convention of 1907 respecting the rights and duties of neutral Powers in naval war.

The Chairman :

Translation : I think I may take it that we are generally agreed on this question of terminology. For the convenience of our discussions, we shall take the terms " inland waters ", " territorial waters " — we may speak either of " territorial sea " or " territorial waters " — " adjacent zone " and " high sea " in the sense defined by M. Gidel. If there are no observations I shall regard the French proposal as adopted.

The French proposal was adopted.

9. DETAILED EXAMINATION OF BASIS OF DISCUSSION No. 1.

The Chairman read the text of Basis of Discussion No. 1 as follows :

> " A State possesses sovereignty over a belt of sea round its coasts ; this belt constitutes its territorial waters."

M. Raestad (Norway) :

Translation : I must first remind the Committee of the very sound remark of the United States delegate — that we were here to do work that should be permanent, and work in which quality and not quantity should count. In other words, we must draw up a text which cannot afterwards be called in question. Our aim must not be to make our codification as extensive as possible ; we must confine ourselves to codifying what will last.

The first Basis forms the guiding principle of the whole Convention. We must, therefore, examine it very carefully because, if we lay down any very rigid provision in it, we might perhaps find afterwards, if doubts or difficulties arose, that our solution of some fundamental question was wrong.

I do not object to the use of the word " sovereignty ". There is perhaps no other term that could be employed. Neither do I ask for this term to be defined ; it is sufficiently clear — in a sense, even too clear.

Reference has been made to the analogy between the Convention we have to draw up and the Convention on Aerial Navigation, and in this connection observations were made on the difference between State sovereignty in regard to the air-space and sovereignty in regard to the territorial sea. As regards the air-space, the countries definitely wished to accept absolute, full and entire sovereignty ; that is to say, their intention was to recognise each other's right to prohibit all air navigation above their territory.

As regards the territorial sea, on the other hand, the whole history of the human race goes to show that no State can forbid others to navigate in its territorial waters. In respect of territorial waters, the sovereignty of the coastal State is checked by the sovereignty of the flag State. In my opinion, it would be a great mistake to put forward the term " sovereignty " as the only guiding principle, because, if we do, all subsequent clauses would be regarded as exceptions. I do not see how either our Conference or any other body can foresee what those limitations may prove to be.

Mention has been made of the right of innocent passage. I should hesitate to say that the right of a vessel in territorial waters is limited to the mere right of innocent passage, because that depends entirely upon the sense attached to the words " right of innocent passage ". That term applies only to a vessel passing through the territorial waters of the coastal State in order to proceed from one State to another. But a vessel crossing the territorial waters to enter a port also has that right. There are restrictions in this matter, even when the vessel is in port, or even if it is lying in territorial waters. Moreover, if we say that the term " right of innocent passage " comprises all the rights appertaining to the vessel, I think we shall not have codified anything at all.

For these reasons — to revert to what Mr. Miller said — I ask that we should set aside whatever is too complex and cannot be settled in a single stage, and confine ourselves to such provisions as we find we can draw up here. Our work is to be continued in the future. Since this is a Conference for progressive codification we must only codify progressively.

There is no lack of precedent in this matter. I refer to the Convention respecting the Laws and Customs of War on Land drawn up by the Hague Conference on October 18th, 1907, the Preamble of which contains the following passage :

> " It has not, however, been found possible at present to concert regulations covering all the circumstances which arise in practice ;
>
> " On the other hand, the High Contracting Parties clearly do not intend that unforeseen cases should, in the absence of a written undertaking, be left to the arbitrary judgment of military commanders.
>
> " Until a more complete code of the laws of war has been issued, the High Contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilised peoples, etc. "

The Norwegian delegation will do its utmost to co-operate in the settlement of all questions for which a practical solution can be found. It feels sure, however, that agreement cannot be reached on every question. It feels equally convinced that the Conference ought not to try to solve at once all the problems which arise, and accordingly has the honour to submit for your acceptance the following amendment :

> " The sovereignty of the coastal State extends over a belt of sea as defined in Articles . . . and specified in this Convention as its territorial waters. Such sovereignty is exercised according to the rules laid down in the present Convention, or, where no such rules exist, in accordance with the rules of international law. "

As you may see, I have retained the term " territorial waters ". In view of the discussion which has taken place, it would, perhaps, have been desirable to use a rather wider term.

The Chairman :

Translation : We might, I think, examine, simultaneously with the Norwegian delegation's amendment to Basis No. 1, the other amendments submitted to us on this question ; that is to say, the Polish and Belgian delegations' amendments.

The Polish delegation has made the following proposal :

" As the term 'sovereignty' used in Basis of Discussion No. 1 is indefinite in meaning and liable to be interpreted in different ways, and as, moreover, even in the present Bases of Discussion, it is used in connection with different legal situations ;

" Lastly, in view of the differences of opinion that exist in the doctrine on the subject ; therefore

" The Polish delegation proposes that, in Basis of Discussion No. 1 and elsewhere, the term 'rights of jurisdiction' or a similar term should be substituted for the term 'sovereignty'."

M. Makowski (Poland) :

Translation : I have closely followed the discussion which has taken place on the use of the term " sovereignty ", and I think a certain misunderstanding exists on the subject. Those of us who advocate the use of that term undoubtedly, attach to it too much importance — I will even say a mystic significance. Its supporters seem to think that, once this term has been embodied in the Convention, a State will be free from all difficulty and all disputes as far as its territorial waters are concerned.

That is not so, however. Each term, each legal expression, can only mean what it means and, accordingly, a term may be desirable and useful, or, on the other hand, inexpedient and even dangerous. For that reason the Polish delegation proposes that, in Basis of Discussion No. 1 and in the other Bases where the term " sovereignty " occurs, it should be replaced by the term " rights of jurisdiction " or some similar phrase.

M. Cohn (Denmark) :

Translation : The Danish delegation is largely in agreement with the observations just submitted by the delegate of Norway. The codification we propose to carry out here is of a rather special character. It is not a matter of drafting a whole code covering all possible eventualities, but simply of preparing a partial and progressive codification. It is out of the question to think of superseding all the existing regulations, which are the outcome of legal practice, by the rules which we may formulate here. Side by side with the latter, there will still exist the body of current rules of international law.

I will not submit any amendment on the question ; I simply ask our Chairman, and perhaps the Drafting Committee, if one is appointed for the purpose, to embody in the Preamble of the Convention a declaration expressing this view. This cannot but help us in all the rules we may prepare.

The Chairman :

Translation : Does the Danish delegate's observation apply only to Basis No. 1, or is it of a general character ?

M. Cohn (Denmark) :

Translation : My observation is of a general nature and applies equally to the other Bases we are to examine.

M. Goicoechea (Spain) :

Translation : I should like first to offer an explanation to the French delegation, whose representative has explained his views so cleverly and skilfully.

I did not say yesterday that I should oppose the adoption of the French delegation's proposal. I simply expressed a misgiving that the precise definition of terms might place difficulties in the way of reaching an agreement. I said that, if the Committee thought it desirable, after studying and analysing the law on the subject, to define the terms employed, I should have great pleasure in voting for the French proposal.

I still think, however, that the precise definition to which I refer will prove a source of difficulty. I cannot quite see the difference, from the legal point of view, between territorial waters, marginal waters, the high sea and adjacent waters.

What are the rights exercised by the coastal State over the adjacent zone ? They are three in number — police rights relating to Customs, to public health and to fisheries. Further, there is a punitive right connected with the military security of the State.

What are the rights exercised by the coastal State in the territorial waters ? The same ; absolutely the same.

As regards the observations submitted by the distinguished delegate of Norway regarding the use of the word " sovereignty " in the first Basis of Discussion, I venture to say that that term ought not to be removed or replaced by another, and this on two grounds — on general legal, and perhaps even philosophic, grounds, and on legislative grounds.

As regards the legal grounds, I agree with the eminent French jurist Larnaude that the word " sovereignty ", which inspires so many fears, is a retrograde term. It expresses the plenitude of the State's rights ; but a State cannot be cognisant of the co-existence of other States unless it is first of all cognisant of its own existence.

For the moment, however, we are bound by the Agreement of October 13th, 1919, on Aerial Navigation. That Agreement employs the term " sovereignty ", accompanied by the qualificatives " absolute ", and " exclusive ". We, however, do not use these adjectives.

I admit that the sovereignty exercised by the State over the marginal sea is not the same as that which it exercises over its territory. That was particularly evident after the adoption of the Barcelona Convention of 1920 on the right of free transit. The Institut de droit international, when faced with the same difficulty, used not the word " sovereignty " but the term " right of sovereignty ".

Would not this solution be the best, and could we not say that the coastal State exercises over the marginal and territorial sea

not the absolute and exclusive sovereignty which it exercises over inland waters, but rights of sovereignty? Obviously, the inland waters come within the jurisdiction of the coastal State, and are intended for its own use, whereas the marginal sea is in common use, since its common use in the form of innocent passage is recognised by all Conventions prior to that which we are preparing.

M. Rolin (Belgium) :

Translation : I should like, with the authorisation of M. de Ruelle, the first delegate of Belgium, who has just arrived, to say a few words in the first place on the Norwegian delegation's amendment, which is supported by the Danish delegation.

At present, there are two questions before us. How are we to formulate the reservation which must be made to the principle of sovereignty, whatever name we give it? And how are we to describe this principle itself?

In the most original part of its proposal, the Norwegian delegation asks us to say that " sovereignty is exercised according to the rules laid down in the present Convention or, where no such rules exist, in accordance with the rules of international law ". This text — at all events in the form proposed — contains, I think, an undoubted error. We want to codify international law, and it would be pushing humility too far to consider that the rules of the present Convention do not form part of international law. We should therefore say : " Subject to the reservations of international law and, in particular, the reservations stated in the present Convention ", because the present Convention must necessarily become one of the most definite parts of international law which limit the powers of States. I think we shall certainly agree on that point.

As regards the point whether the part of international law which may constitute an exception to the fundamental powers which we recognise the coastal State to possess should be governed entirely by the rules of uncodified international law, I think that perhaps some of us will regard it as necessary to wait for the outcome of our work in this matter, and see how far we succeed — or, at all events, believe we have succeeded — in exhausting the question. If we feel that international law might perhaps introduce reservations in fields other than those with which we have dealt, we shall then certainly have to employ a formula of the kind proposed.

I wish now to give some explanations regarding the considerations underlying the Polish and Belgian delegations' proposals in the amendment they have submitted.

The Belgian amendment reads as follows :

" Subject to the reservations and within the limits to be laid down hereafter, the territory of a State extends to a belt of sea bathing its coasts. This belt constitutes the territorial sea and, subject to the same reservations and limitations, any question relating to its administration or control comes within the exclusive jurisdiction of the coastal State."

I confess that, as M. Giannini said, there is perhaps among my most secret motives a certain fear or sentimental dislike of a word which, after all, has been responsible for a great number of abuses. You will admit, however, that it was not as a partisan of international law that I spoke yesterday, and the objections I raised were only what seemed to me technical objections. On thinking the matter over since yesterday, these objections seem to me still stronger, and, if I had had any doubt, some of the arguments of those who favour the use of the word " sovereignty " would fully have convinced me.

What did they say? Some of our colleagues said that, undoubtedly, the sovereignty to which we refer is not the sovereignty of the Convention on Aerial Navigation, that that Convention speaks of absolute and exclusive sovereignty, that there is no question of any such sovereignty here, and that we must take care not to attach these two qualifying expressions to the word ; that perhaps it would even be wise to use some form of periphrasis.

We find, for example, in the Barcelona Convention of 1920 the word " sovereignty ", accompanied by the word " authority ", used as a synonym, though it is a much weaker term. We are also told of a milder form used by the Institut de droit international, which suggests the words " rights of sovereignty " *(droits de souveraineté)*, though it is not known what this imperfect sovereignty is which will be exercised by the coastal State.

Can we really, in a document which is intended to be clear and simple, employ words which can be used with so many shades of meaning, and which are used in such varied forms and with such uncertain qualifying terms? Do you think that, in so doing, we shall be rendering great service to those who will have to interpret our Convention? Would you yourselves, if you were asked, be able to explain how absolute and exclusive sovereignty will differ from unqualified sovereignty or from rights of sovereignty, or from sovereignty accompanied by the synonymous term authority? Do you not think we are leaving too much to the imagination of those who will be asked to decide these questions? Are not these different shades of meaning sufficient in themselves to justify the removal, from a legal document which ought to be clear and simple, of a term capable of such varied acceptations?

I cited yesterday in favour of the term " domestic jurisdiction " a document which has a very definite value for many of us — the Covenant of the League of Nations. On thinking the matter over, I realised that there was a considerable number of international documents, recognised as valid by all of us, in which we find the words " domestic

jurisdiction " and not the word " sovereignty ". I refer to the arbitration Conventions, in which, as far as I am aware, the word " sovereignty " is never used : I have in mind particularly that attempt to codify our international procedure and our rules of jurisdiction, the General Act of Arbitration, which we adopted at Geneva, which certain States have already ratified, and which a large number of States announce that they intend to ratify. In Article 39 of the General Act of Arbitration, we provided that " these reservations may be such as to exclude from the procedure described in the present Act . . . disputes concerning questions which by international law are solely within the domestic jurisdiction of States ".

When we attempt to regulate in the clearest and surest way the rules of jurisdiction as between international organisations and to limit that sphere of jurisdiction within which the State's decisions are paramount and within which it is not answerable to anyone, we use the words " *compétence exclusive* " in French and " domestic jurisdiction " in English.

I quite agree that these terms may at first sight appear imperfect, and that, in particular, " domestic jurisdiction " may not appear to correspond exactly to " *compétence exclusive* " ; nevertheless, the case law of the Permanent Court of International Justice for the past eight years has been built up on the interpretation of these words.

In 1919, an instrument which in many ways is similar to the one we have in view — I mean the Convention on Aerial Navigation — employed the word " sovereignty ". Since that time, there appears to have been a desire to avoid the term. At all events, whenever we have had to do with jurisdiction or have had to fix the limits of international jurisdiction, which are exactly the same as the limits of the authority we wish States to have, we have always carefully employed the term " domestic jurisdiction ". I ask you whether, now that we are proceeding to codify international law, we should be wise to discard it. I personally feel sure it would be a dangerous mistake.

The Chairman :

Translation : M. Rolin has modified his proposal, but I think we ought not at the present stage to deal with drafting questions.

M. Arango (Colombia) :

Translation : As regards the regime applicable to the sea, since international regulations are to be established in this matter, I think the term " sovereignty " cannot be accepted without causing difficulties from the technical — that is to say, from the essentially legal — point of view. Strictly speaking, the State has no " sovereignty " over the waters of the sea around its coasts ; it has only a body or group of rights over those waters, a kind of " competence " or " jurisdiction " (I would emphasise those two words). This competence or jurisdiction, however, necessarily accords the coastal State a certain right of ownership or dominion limited by international law, which is placed above all sovereignty.

In any case, the coastal State exercises over a certain part of the sea a power clearly different from the sovereignty it exercises over its territory — I mean over its territory in the strict sense of the term. This special power must not be confused with that sovereignty, since the State has, over the " national sea ", the full powers characteristic of sovereignty. Nevertheless, the notion of " sovereignty " appears to have become very elastic and liable to changes and even to certain restrictions. I am, therefore, prepared, if need be, to accept the word " sovereignty " in a special technical sense.

The State has, I think, a " sovereignty " *sui generis*, with an indisputable right of ownership or dominion and with wide powers over the national sea, to which so many very different names are given. The national sea comprises the volume and surface of the waters, the bed of the sea, the subsoil and the air-space above the waters.

Further, I think it would be desirable to discard the term " territorial sea ", which is a kind of antithesis or paradox introduced into the legal vocabulary. Although it is already consecrated by use, it is liable to cause confusion ; the terms " maritime territory " and " territorial waters " are equally objectionable. I propose that we employ instead of them the term " national sea " or " jurisdictional sea ".

In specific cases, of course, we may also use a name derived from the particular geographical name of the coastal State ; for example, the Colombian sea or Colombian waters. This is the name given to certain maritime zones over which the Colombian State has exclusive rights, including ownership or dominion, in so far as those rights are not opposed to the principles, conventional rules or practices of international law.

There are several names which are much more suited than traditional appellations to the present-day evolution of international law and to its modern terminology. We must not invariably apply the old terms and rules to new forms of status required by present-day circumstances. We must face realities as regards the sea and as regards law. We must carry out a rational analysis of the truth both as regards physical facts and as regards law.

We must, I think, simplify the terms we use and standardise as far as possible the names for the various parts of the sea over which the State exercises its " sovereignty " or its " jurisdiction " : national sea, jurisdictional sea. littoral sea, marginal sea, coastal sea, adjacent, sea, neighbouring sea, contiguous sea, territorial sea, maritime territory, territorial waters, and so on.

Lastly, I take this occasion — and I am proud to do so — to say that the Republic of Colombia has always been one of the countries which has enthusiastically welcomed the civilising principle of the freedom of the sea, considered in its real legal aspect.

Sir Maurice Gwyer (Great Britain) :

It was surprising at the beginning of this discussion that, in an Assembly of the representatives of more than forty sovereign States, the very idea of the use of the word " sovereignty " should have occasioned such terror — I almost said panic ; but I have listened carefully to the observations of the Norwegian delegate and I appreciate that there may be certain difficulties in the use of that expression.

I do not myself share the apprehension which has been expressed ; but I take it that all the delegations present are agreed on the question of principle, which I understand to be this — that a State is entitled to exercise over its territorial waters all powers in as ample a measure as it exercises them over its own territorial land, subject, of course, to such reservations as may be prescribed hereafter in the Convention which we hope will be the result of the work of this Conference.

The belt of territorial water, whatever that belt may be, is, in other words, an extension of the land territory of States whose territorial waters they are, and in those circumstances I should have thought that the question of defining those rights became merely a matter of words which could be suitably referred to a Drafting Committee if the Committee thinks fit to appoint one now or later on.

On the question of principle, from what I have heard this morning, there seems to be no difference at all (I say it with all respect) between the various delegates who have spoken. Rights over the territorial wathers, whether they are called sovereign rights, jurisdictional rights — whatever they may be — are precisely the same as those which the State exercises over its territory on land. That being so, I would suggest for the consideration of the Committee that a decision should be taken on that question of principle which does not seem to be in dispute, and that the words in which the principle is to be expressed should be referred to some technical Sub-Committee to settle and refer the matter back to the Committee again later.

The Chairman :

Translation : I am inclined to take Sir Maurice Gwycr's view. We are, I think, agreed on the principle ; we are agreed as to the character of the rights of the sovereign State, namely, that those rights are something like the air which tends to fill a vacuum. In other words, wherever the rights of other States do not exist, and where there are no servitudes, the coastal State has exclusive jurisdiction. That has been my impression up to now.

M. Sjöborg (Sweden) :

Translation : I quite agree with the proposal that the drafting should be entrusted to a Drafting Committee, but I think it would be desirable to settle first of all the question of the name to be given to the rights exercised by the coastal State. The Polish delegation proposes to substitute the term " rights of jurisdiction " for " sovereignty ". The Belgian delegate asks for the term " domestic jurisdiction " to be substituted for " sovereignty " in all questions relating to the administration or control of territorial waters.

In giving the reasons for his proposal, the Belgian delegate mentioned the international Conventions on arbitration in which the word " sovereignty " does not appear, the term " domestic jurisdiction " being used instead. I do not think we can press too far any analogy with the arbitration Conventions, since the subjects with which they deal are quite different from territorial questions. They relate to international and domestic jurisdiction, which is quite another thing.

Following the example of the Belgian delegate, I too will cite an international Convention; but for the very purpose of showing that it is desirable, and indeed almost necessary, to use the term " sovereignty ". The Convention to which I refer is that of 1907 on naval war. It states that, in the territorial waters of a neutral Power, a belligerent has no right to commit an act of aggression ; such an act would constitute a violation of neutrality. It further lays down that the neutral Power, for its part, is bound to oppose and repel any act of aggression in its territorial waters. Does it derive this international duty from simple " jurisdiction " in a domain relating to the administration or control of its territorial waters ? Is this duty derived solely from rights of jurisdiction ? I think not. If the coastal State has this duty, it can only be because it possesses, in respect of those waters, that body of rights and duties which, in the absence of any other name, has for long been customarily termed " sovereignty ".

Although, therefore, in my opinion, we must keep the term " sovereignty ", I quite agree with the Norwegian delegate that it would perhaps be dangerous to use the word without some qualification, in view of the large restrictions imposed upon this right of sovereignty in the subsequent provisions of the draft. This danger may be particularly great because special provisions may subsequently be introduced involving other restrictions, which cannot be mentioned in the Convention now for the very good reason that we do not yet know what they are. There must, therefore, be some restriction upon the term " sovereignty ", and I think that the formula proposed by the Norwegian delegation is quite sound, provided that due account is taken of

the amendment proposed by the Belgian delegate, namely, that the wording should be as follows :—

" This sovereignty is exercised according to the rules of international law and, in particular, with those of the present Convention. "

The Chairman :

Translation : I should like to prevent any misunderstanding. I did not intend just now to give any opinion for or against the use of the word " sovereignty ". I simply suggested that, in order to shorten our discussions, we might appoint a Sub-Committee to continue the examination of this question, and more particularly to study Basis of Discussion No. 1 and Chapter 4.

I think, however, that the Committee as a whole, which attaches great importance to this particular point, prefers to carry on the examination of the matter itself.

Am I to understand that that is the Committee's opinion ?

M. Meitani (Roumania) :

Translation : If the Committee thinks that all the amendments proposed should be referred to a Drafting Committee, I have no objection and I shall not ask to speak. If, however, the Committee is of the contrary opinion and decides to continue the examination of this question here, I should like to speak now.

The Chairman :

Translation : The Roumanian delegate has put before us a very definite question. He would like to know whether the Committee intends to continue here the discussion of the question of sovereignty or whether it prefers to refer it to a Sub-Committee.

The Committee decided to continue the discussion of Basis No. 1.

M. Meitani (Roumania) :

Translation : I wish to examine each of the amendments submitted by the various delegations. I will begin with the Norwegian delegation's amendment.

At the meeting held the day before yesterday, the Norwegian delegate recognised that countries had a certain right over their territorial waters, but he did not define the nature of that right.

I am glad to see from the Norwegian delegate's amendment that all States are allowed a right of sovereignty over their territorial waters. If I may say so, however, that statement so frightened the Norwegian delegate that he immediately sought ways and means of circumscribing the very affirmation he had originally made.

From the manner in which the amendment is drafted, it would really seem that the Norwegian delegate is afraid of the consequences in which every State might be involved through being recognised as sovereign over its territorial waters.

The Norwegian amendment provides that this right of sovereignty must be exercised in accordance with the rules of the present Convention, or, where no such rules exist, in accordance with the rules of international law.

But surely that is self-evident. True, I remember that Talleyrand once remarked that, though a certain thing went without saying, it would go still better if it were said. It seems to me that, if the right of sovereignty is exercised, it can only be on those conditions. If there is a Convention restricting the right of sovereignty, the right of sovereignty over the territorial waters can obviously only be exercised in accordance with that Convention.

The Norwegian delegate adds : " or, where no such rules exist, in accordance with the rules of international law ". Of course ; no one disputes it. Besides, the Belgian delegate has formally recognised it.

A right — no matter what right, the right of sovereignty or any other — is exercised in accordance with Conventions or with the customs and usages of international law.

In short, it seems to me that this first amendment is largely a matter of words, and that the principle of sovereignty is recognised ; and that is the point in which I myself am interested. I may say that my Government insists that it shall be recognised as possessing this right of sovereignty.

The Polish delegation, also, has submitted an amendment. In his explanation, the Polish delegate told us that this principle of sovereignty had almost a mystic significance. At all events, you will agree that it is a mysticism with which people have been familiar for centuries. I am aware that all ideas alter, that opinions vary, that time changes everything ; nevertheless, this idea of sovereignty has existed, and still exists, and is upheld, by very many countries. There has always been a certain interdependence between countries, a certain law of solidarity. Indeed, it is in virtue of this law that we are now met at this Conference. Hence, it seems to me to be going rather too far to maintain that the right of sovereignty is in the nature of mysticism.

Accordingly, I think the Committee should not accept the Polish amendment, which proposes the substitution of the term " jurisdiction " for " sovereignty ".

The Swedish delegate cited the Hague Convention of 1907 concerning the rights and duties of neutral Powers in naval war, and spoke of the rights of jurisdiction and competence. If the national territory and the territorial waters have to be defended when belligerent vessels enter them, I think that neither the Polish nor the Belgian delegate can maintain that we are dealing with a right of jurisdiction, even exclusive jurisdiction.

The State's right of sovereignty is a right which must be recognised by this Conference, and for that reason I myself will vote against all amendments that do not recognise it.

Abd el Hamid Badaoui Pasha (Egypt) :

Translation : I think the discussion is beginning to give definite results. There are three points of view, namely, the one laid down in the Bases of Discussion, the one adopted by the Belgian and Polish delegations, and the one submitted by the Norwegian and Swedish delegations.

All these points of view hinge upon the word, or rather the idea, of sovereignty.

The Basis of Discussion adheres to tradition. It adopts the word " sovereignty " because that is the traditional term. The word appears in a document as important as that which we propose to draw up. Moreover, it is a very convenient and readily comprehensible expression which answers all requirements.

We all agree that the coastal State should retain all powers and all rights except those of which it is deprived by the restrictions or reservations contained in the Convention.

Are the other two points of view fully justified, and are they such as to lead to a vote on the Bases of Discussion in their present form ? I think not.

The point of view of the Belgian and Polish delegations seems to be inspired mainly by a feeling of dislike for, or rather fear of, the idea of sovereignty.

This fear is based on the fact that sovereignty, the interpretation of sovereignty, and its application in the past, have given rise to a number of abuses. But the war and the whole trend of both theory and practice, and also the recent development of solidarity and international co-operation, have done much to render the notion of sovereignty very relative ; at all events, less absolute than it used to be. It was not so much the word itself as its purport and its past interpretation which led to its abuse.

Would it therefore be better to adopt, in place of the term " sovereignty ", another term, such as " right of jurisdiction " or " domestic jurisdiction " ?

The Belgian delegate referred to a number of arbitration treaties, in which the term " domestic jurisdiction " was employed ; this term, however, relates rather to the idea of reservation. If we want to reserve something, we speak of domestic jurisdiction ; but when we want to affirm a right it is better to introduce the idea of " sovereignty " rather than that of " domestic jurisdiction ".

Another objection to these terms arises out of the Bases of Discussion themselves. At the end of these there is a reference to criminal jurisdiction or competence. There would thus be a certain ambiguity in using the word jurisdiction or competence sometimes in its integral and sometimes in a partial sense.

The divergence of views which has arisen between the standpoint of the Belgian and Polish delegations and the text of the first two Bases of Discussion is fundamentally a question of terminology. Those two delegations agree as to the idea to be expressed by these two Bases.

I might further point out that the word " sovereignty " has been used more recently than the term " domestic jurisdiction ". The Convention on Aerial Navigation is more recent than the Covenant of the League. Thus, there is no question of priority or the reverse, and it cannot be said that at any given moment a new path was chosen, or that, from a certain moment, the word " sovereignty " ceased to be used. On the contrary, the word is still being used and represents an idea which is still very much alive.

As regards the Norwegian delegation's point of view, it seems to me to mark the relative character of Bases of Discussion Nos. 1 and 2. The Norwegian delegation would like to say that the notion of sovereignty, as expressed in Bases of Discussion Nos. 1 and 2, is not an absolute notion. On that point we may all, I think, agree that the Norwegian delegation is right. Of all sovereignties, that over territorial waters is the least absolute.

The draft before us, like the previous practice followed in the matter, always admits the limitations to this sovereignty. Is it necessary, however, to state this idea of relativity in the Bases of Discussion to make it a condition upon which a vote is taken ? The same question arose yesterday in the Third Committee, when the French proposal was submitted to the effect that any failure on the part of a State to fulfil its international obligations involves the responsibility of that State. Reservations were made at once, and eventually the Committee agreed that, despite its absolute form, the relative character of this principle would be demonstrated by the Convention as a whole.

Whether we say, or do not say, in this first Basis that the sovereignty of the coastal State is exercised in accordance with the rules of the present Convention, the practical result is the same.

Apart from the relative character of the Convention, however, the Norwegian delegation also wished to mark what I will term the suppletory character of international law. For that purpose it proposes that sovereignty should be exercised in accordance with the rules of the present Convention or, where no such rules exist, in accordance with the rules of international law. Its intention appears to be to give a suppletory or complementary value to the customs of international law. That, however, is self-evident, except in the case of any usages of international law which are contrary to the rules of the present Convention.

Obviously, it cannot be assumed that, after having drawn up a Convention such as this, which will itself be one of the sources of international law, a previous practice should be cited as representing international law. That would be self-contradictory. What is the real issue ? It is to reserve the possibility that the customs of international law may lead

to the establishment of a rule which would complete the effect of the Convention. That, too, is self-evident, and in this connection I do not quite agree with Talleyrand's saying quoted a moment ago that "*cela ira mieux encore en le disant*". In point of fact, it lies at the very basis of any Convention. Clearly, the signing of a convention does not bar the way to the formation of customs. If any particular situation arises and leads to the creation of a custom, the custom will become implanted; and, when it reaches maturity and is universally adopted, it will eventually be codified.

I think, therefore, that we are all fundamentally in agreement as to the first two Bases of Discussion. On the one hand, we have an amendment to replace one word by another, and that amendment might be referred to the Drafting Committee, since the Belgian and Polish delegations do not deny that a State has all duties and rights except those reserved by the Convention. On the other hand, the Norwegian delegation desires to mark the relative character of this statement of principles. I think we are all prepared to accept that. Lastly, there is another amendment to reserve the possibility of establishing an international custom, and I think we all recognise that that point too is self-evident. I therefore suggest that the Committee should adopt Bases of Discussion Nos. 1 and 2.

Mr. Miller (United States of America):

I merely wish to express the following view on the question of principle. The territorial sea forms part of the territory of the coastal State. Other States have by treaty or international law certain rights or privileges in the territorial sea, but they are rights or privileges within that part of the territory of the coastal State.

Accordingly, I submit the following provisional amendment, which I ask to have referred to the Drafting Committee:

> "The territory of the coastal State includes a belt of sea as defined in Articles . . . and specified in this Convention as its territorial waters. The exercise of sovereignty therein is subject to the rules laid down in the present Convention, or, where no such rules exist, to the rules of international law."

The continuation of the discussion was adjourned to the next meeting.

The Committee rose at 12.45 p.m.

FOURTH MEETING

Thursday, March 20th, 1930, at 10 a.m.

Chairman: M. GÖPPERT.

10. CONTINUATION OF THE DETAILED EXAMINATION OF BASIS OF DISCUSSION No. 1.

M. Giannini (Italy):

Translation: When it is desired to do practical work, I think it is a very good habit not to engage in purely theoretical discussions.

Yesterday, I listened very attentively, as always, to the interesting speech of M. Rolin, who recalled the discussions which took place between 1900 and 1910 on State rights over the air-space. The same arguments were used. There was talk of sovereignty and of State rights, but the practical consequences are still the same. In 1919, all that was done was to codify the principle of sovereignty.

M. Rolin says that this principle is already out of date. I will venture to observe that, if, after a period of ten years, it can be said that something is out of date, it is hardly pleasant either for us or for the institutions themselves.

I really think, however, that we need feel no uneasiness in considering the problem of sovereignty. It is formula with a practical application which has never given rise to difficulties. Moreover, in order to avoid the word "sovereignty", our colleague, M. Rolin, is obliged to make a proposal which, from the technical point of view, is open to rather definite objections. He says that the territory of a State extends over the belt of sea around its coasts. It is surely just a little far-fetched to speak of the sea as territory; territory cannot extend over sea. At most, it could be said that the State possesses the same rights over the sea as over its territory.

For all these reasons, therefore, I think that the Belgian delegate's formula cannot be accepted.

Further, I should like to try to deduce practical consequences from a principle which we do actually lay down, though we try not to do so. We avoid the word, but we draw the same consequences from the principle.

In brief, I think we must abide by the proposal of our Norwegian colleague, without adopting the pleonastic form used in the Paris

Convention, namely, "full and entire sovereignty". "Full and entire sovereignty" means nothing, because sovereignty is always full and entire. Moreover, the Paris Convention itself, after speaking of full and entire sovereignty, goes on to speak of "innocent passage".

As you see, therefore, we are in precisely the same position as regards the territorial sea.

We have just received an amendment from the United States delegation. The formula proposed in this case is not very different from that submitted by the Norwegian delegation. It reads as follows : "The territory of a coastal State includes a belt of sea as defined in Articles . . ."

Our colleague wishes, I think, to regard the belt of territorial sea as an accessory of the territory. That is the principle which appears to underlie his proposal.

We have come, then, to an attenuation of the principle of sovereignty, which has already been attenuated in the Norwegian formula. In the second sentence, it is true, an attempt is made to clear up the situation a little. It reads : "The exercise of sovereignty therein is subject to the rules laid down in the present Convention, etc."

The territorial sea is thus regarded as an accessory of the territory, over which the State possesses the same rights as over the territory itself.

I think we might close this general discussion, which has lasted too long, and simply refer the matter either to the Drafting Committee or to some Sub-Committee appointed for the purpose, whichever the Committee may decide.

We might take as a basis the formula proposed by our Norwegian colleague, with the suggestions or simplifications proposed by the Swedish delegation. An endeavour should be made to combine the two formulas with that of the United States delegation, as all these formulas appear to me to be sufficiently in agreement.

In my opinion, if we try to get to the root of questions of doctrine, we are likely to lose ourselves in a welter of words, and that is what I, for my part, want to avoid.

I ask the Committee, therefore, to close the discussion and refer the question either to the Drafting Committee or a special Sub-Committee appointed for the purpose, which will take as its basis the United States formula, the Norwegian formula and the suggestions submitted by the Swedish delegation.

The Chairman :

Translation : The proposal just made by M. Giannini gives me an opportunity of consulting the Committee as to the procedure to be followed in appointing a Sub-Committee.

I intended, after we had reviewed the Bases of Discussion Nos. 1, 2 and 19 to 24, to propose that a Sub-Committee of ten members should be appointed. I was then going to suggest that a second Sub-Committee should be appointed to deal with technical questions. When we have finished revising Bases 1, 2 and 19 to 24, I will consult you as to the appointment of the first of these Sub-Committees.

M. Meitani (Roumania) :

Translation : The Italian delegation proposes to set up a Drafting Committee to draw up the text of Basis No. 1 in the light of the amendments submitted by the Norwegian and United States delegations. I think, therefore, that the Committee must be consulted immediately on the question whether a Sub-Committee should be appointed now, or whether the discussion should continue. If we continue the discussion, M. Giannini's proposal, which is intended to save time, loses its point.

The Chairman :

Translation : I did not understand M. Giannini to mean that he proposed the immediate appointment of a Drafting Committee.

M. Giannini (Italy) :

Translation : I asked that the discussion should be closed, and, if the closure is agreed on, that the question with which we are now dealing should be referred to the Drafting Committee. In that case, it would be useless to continue the discussion. It has already lasted too long, and I am sure that no delegate can have any new arguments to put forward.

The Chairman :

Translation : I will explain how I proposed that our work should be arranged. I told you that, when we had finished revising Bases of Discussion Nos. 1 and 2 and 19 to 24 on the first reading, the outstanding questions might be referred to a Sub-Committee for closer study.

M. Giannini proposes the closure of the discussion, but that does not mean that the speakers at present on my list cannot address the Committee. As soon as we have heard them, we shall see whether we ought to discontinue our examination of the Norwegian, Swedish and United States proposals.

M. Sitensky (Czechoslovakia) :

Translation : M. Giannini's proposal seems to me a very sound one ; but, before we appoint a Drafting Committee, I think we should hear the views of all the delegations, so that the Drafting Committee may take them into account.

I personally consider that a text based solely on the principle of sovereignty would fulfil the purposes we have in mind. In my opinion, we have not to lay down principles ; we have to define the rights of the coastal States in the territorial waters belt. The territorial waters are still part of the sea, and, according to the principles of international law, a vessel on the high sea is subject to the law of the State whose flag it flies. On the other hand, the law applicable in inland waters is that of the coastal State.

In territorial waters the two jurisdictions come into opposition. As the Norwegian delegate has already said, the parties concerned will, in some cases, be prepared to accept the application of the coastal State's law; in others, the law applicable will be that of the State whose flag the vessel flies. In order to prevent conflict, the field of application of each of these laws should be clearly defined, and the cases in which they are respectively applicable must be exactly specified.

I am afraid that the text of Basis No. 1 does not settle this question clearly enough. If the absolute principle of the sovereignty of the coastal State is embodied at the beginning of the Convention, it will be taken as applicable in all cases where no exceptions are expressly provided by the Convention. It may, however, prove very difficult to provide for all the exceptions to the principles of sovereignty of the coastal State. Consequently, in adopting this principle we risk compromising that of the freedom of maritime navigation.

For these reasons, it would, in my opinion, be preferable to prescribe in a positive manner the extent of the coastal State's powers in the territorial waters belt, enumerating the different rights of that State, but not laying down the general principle of sovereignty. I think, therefore, that there is no need to find a special name for the body of rights held by the coastal State in its territorial waters.

M. de Magalhães (Portugal):

Translation: I voted yesterday for the continuation of the discussion on Basis No. 1 because I was — and still am — convinced that this is not merely a question of word but also, and primarily, a question of principle. I agree, however, that, when the debate is concluded, a Sub-Committee should be appointed to prepare the final text.

As regards Basis No. 1, the Portuguese delegation supports the Norwegian delegation's proposal in the sense, and for the reasons, which I am about to explain. The Norwegian proposal employs the word "sovereignty". I am not a very enthusiastic advocate of that word, but I do not think we can find another which can advantageously take its place. The other terms suggested raise still more doubts than the word "sovereignty" itself, and some of them are more restrictive. That is the case with the words "competence" or "jurisdiction". Sovereignty is a body of rights; competence and jurisdiction are rights arising out of sovereignty.

Further, the scope of the word "sovereignty" is specified in the Norwegian proposal, which states: "The sovereignty of a coastal State extends over a belt of sea . . ." That specification corresponds very closely, in my opinion, to the idea put forward yesterday by the United States delegate when he said that the territory of the State comprises the territorial waters. On that point, I think we are all, or almost all, agreed; and for that reason, and for others too, I am of opinion that we should use the term "territorial waters".

The Norwegian proposal contains another proviso. It reads: "This sovereignty is exercised in accordance with the rules of the present Convention". As soon as the Convention is approved, all questions relating to territorial waters will be regulated in accordance with the Convention. Obviously, we shall not succeed in providing for all possible cases; our Convention will contain lacunæ. How can we supply these omissions? According to the Norwegian proposal, recourse will be had to the rules of international law. The Belgian and Swedish delegations propose to modify the text by stating that "this sovereignty is exercised in accordance with the rules of international law and, more particularly, in accordance with the rules of the present Convention".

I accept the above amendment, because I think it does not modify the principle of the Norwegian proposal. According to that proposal, the rules primarily applicable are those which will be provided in the Convention, and in the second place recourse may be had to the rules of international law. If we used the words "where no such rules exist", as suggested, it might be inferred that the Convention does not form part of the rules of international law; fundamentally, however, the idea is the same.

In the first place, the territorial waters question will thus be governed by the Convention; in the second place, the rules of international law will be applicable; in the third place, there will be consequences arising out of the principle of sovereignty. That seems to me fully in conformity with the rules of legal interpretation.

In conclusion, I repeat that the Norwegian proposal, as amended by the Belgian delegation, although it expresses the same idea as the United States proposal, gives foremost place to the principle of sovereignty, which pervades the whole Convention. Then come the definitions. This sovereignty is the same as that exercised by the State over its territory; it must be exercised in conformity with the rules of international law and, in particular, with those of the Convention. In the absence of such rules, it will be exercised in accordance with the consequences arising out of the principle of sovereignty.

That is the sense in which I interpret the Norwegian proposal, and those are the reasons for which, on behalf of the Portuguese delegation, I support it.

Dr. Schücking (Germany):

Translation: The German delegation thinks that a distinction must be drawn between two groups of amendments. The first group aims at avoiding the use of the word "sovereignty" altogether. I think we must reject all those amendments, and on that point I share the view expressed here by our distinguished colleague, M. de Magalhães,

namely, that we have no other word which would adequately denote the general and unanimously acknowledged rights of the coastal State.

The Polish proposal speaks of rights of jurisdiction. That, too, must be rejected, because the word " jurisdiction " is already used in our draft Convention in a more restricted sense, namely, in the sense of rendering justice. This very sound observation was made yesterday by our colleague of the Egyptian delegation. It would give rise to ambiguity if we used the same word in the same Convention in two different senses.

The same reason, in my opinion, justifies the rejection of the Belgian delegation's proposal too. Whenever the term " *compétence exclusive* " is used in international treaties, it is translated into English by the term " domestic jurisdiction " ; and it is this very word " jurisdiction " that we must avoid.

There are still more reasons why the term " *compétence exclusive* " is inadequate. It does not characterise the duties of the coastal State, as was pointed out yesterday by our distinguished colleague of the Swedish delegation.

For all these reasons we must retain the word " sovereignty ", which I am convinced is essential on technical grounds. Provided we have the right idea of the actual meaning of the word, I do not see any difficulty in applying it.

The other group of amendments retains the term " sovereignty " ; but their authors, the Norwegian and United States delegates, wish to correct and widen the scope of the present text of Basis of Discussion No. 1.

It is therefore rather a question of drafting, and I shall support the proposal of our distinguished Italian colleague that a Sub-Committee should be appointed to draw up a final text on the basis of the Norwegian and United States amendments.

M. Gidel (France) :

Translation : Basis of Discussion No. 1 raises questions both of substance and of form.

As regards the questions substance, the French delegation would simply refer to what has already been most adequately expressed by the British delegate. As regards the legal status of territorial waters, the French delegation considers that they constitute submerged territory.

There remains the question of form. The British delegate thought that the matter is simply one of drafting. That is true ; but it is a sufficiently important drafting question to justify in every way its present discussion by the Committee.

This question of terminology, in fact, is of considerable importance from the general point of view, and also, and more particularly, as far as the text on which we are working is concerned.

As regards its general importance, the question which arises is whether we intend to proscribe the use of the word " sovereignty " in the language of international law. This is the first Codification Conference. Clearly the language we use will have an important influence on all the work of codification, which will be carried on afterwards, and we all hope that it will not fail to be carried on.

For those reasons the use of the word " sovereignty " or its rejection is a matter of great importance.

The French delegation greatly appreciates the observations submitted by the Belgian delegation, and it realises as clearly as that delegation the wrongs that have been done in the name of sovereignty. To-day, however, as the German delegate very rightly said just now, sovereignty is no longer regarded as absolute. We all realise that sovereignty represents the sum-total of the powers exercised in accordance with international law.

Our work of codification consists, in fact, in determining what are the powers which are recognised by international law and the sum-total of which constitutes sovereignty. In the light of these observations, I think there is no objection ; indeed, I think there is nothing but advantage in retaining the term " sovereignty ", as several delegates have already emphatically stated. If we do not adopt this term in Basis No. 1, we cannot retain it in the subsequent Bases.

Immediately after Basis No. 1, however, there is a provision, relating to the territorial air-space, in which the question of sovereignty arises. That Basis of Discussion is taken almost word for word from a text of positive law — I refer to the Air Convention of October 13th, 1919. I consider, therefore, that it is in every way desirable to retain an expression which has already been used in a text of positive law and which we shall probably embody in the result of our work.

As regards the question of procedure, the French delegation considers that the Chairman's proposal to appoint a Sub-Committee, to which the various questions discussed here will be referred, is an excellent one. The only question which arises is when this Sub-Committee is to be appointed and when it is to begin its work. Are we to appoint it at once and refer Basis No. 1 to it ? Or is the question of the Sub-Committee not to be considered until later, and will there be referred to it a number of texts which have been fully discussed here ?

The French delegation is of opinion that the second solution is greatly preferable. We can safely leave it to the Chairman to decide what will be the best time to appoint this Sub-Committee, which will then have to deal with all the work we have done up to that time. The Sub-Committee will then be able to carry out its work as a whole and to compare the various solutions we have reached with the

different exchanges of views that have taken place ; this will give the Sub-Committee an adequate basis for its work.

We must, I think, give the Sub-Committee a text on which to work. Several have been submitted to us ; some of them differ very considerably among themselves, while others bear clear evidence of their kinship. Two texts, in particular, seem to me very closely related — that of the United States delegation and that of the Norwegian delegation. I would therefore propose that the Committee should decide whether the United States amendment could not be referred to our Sub-Committee when it begins its work, since the latter may, when examining the United States amendment in detail, take into account the wording of other amendments, such as that of the Norwegian delegation.

The French delegation proposes, in brief, that the Committee should take a vote on the principle of the United States amendment and on the question of referring it to the Sub-Committee which will be appointed when the Chairman considers it expedient.

I should like to say quite explicitly, as, indeed, I implied in the observations I have just made, that the French delegation supports the principle of the United States amendment, which seems to contain all the essential ideas and, moreover, does not seem to differ in substance from the Norwegian amendment. I think, too, that there are a number of delegations that share this view.

The Chairman :

Translation : I feel sure that the speakers on my list will take into account in their statements the proposal which has just been made to the Committee by the French delegation.

M. Novakovitch (Yugoslavia) :

Translation : I do not wish to prolong this discussion, but it seems to me desirable to make two suggestions which, in point fact, relate to the wording of the formulas we are to adopt. The object of these suggestions is to introduce the necessary precision in the text.

One of the points in question relates to the words " rules of international law ", which are to be found in the Norwegian and United States amendments. This term was limited by the Hague Convention of 1907, as the authors of that Convention thought it desirable to add the words " recognised by civilised nations ". I should like to introduce the same idea here. What are the rules that are to limit the fundamental right which I personally am in favour of terming " sovereignty " ? I should like it to be defined as the international rules recognised by the nations, either by convention or by custom.

In the second place, I should like us to emphasise the difference between the extent of the sovereignty referred to in Basis No. 1 and that in Basis No. 2. The sovereignty referred to in Basis No. 2 will probably be more extensive than that of Basis No. 1. I should like this to be made clear by adding either the word " absolute " or the words " full and entire ", or some other term. I should like, I repeat, emphasis to be given to the difference in the scope of the sovereignty exercised by the coastal State in the territorial waters and that which it exercises over the territorial air, if our discussions show that a difference between the two sovereigntics exists.

M. Erich (Finland) :

Translation : In my opinion, the outcome of our discussion to-day on the term to be preferred seems to be that the word " sovereignty " is the best, and, indeed, that it really must be employed. We have found that we cannot substitute any other suitable term for it. That is easily understood, since it is in the essential nature of the State that a certain maritime zone should always belong to the coastal State.

It is an established maxim of legal theory nowadays that sovereignty is not a rigid and absolute quality ; it is capable of adaptation, consistent with certain restrictions in favour of other States. Thus the word " sovereignty " is far preferable to the other expressions suggested, such as " domestic jurisdiction ". That term would be likely, in my opinion, to give rise to uncertainty and misunderstanding ; it is, in fact, much more categorical, much more rigid, than " sovereignty ". Accordingly, it is the term " sovereignty " we must employ, and we need have no scruple in dispensing with any explanatory epithet, even if it were explicitly limitative, since it is self-evident that sovereignty is always understood to be restricted.

There is only one reasonable objection that might be raised, namely, that the question might arise of the territorial waters of a State which is not sovereign, or whose sovereignty is disputed by another claiming to be paramount. This objection is not conclusive, however. Other considerations have greater weight, and I think there is one circumstance in particular which must be taken into account. In French terminology, no clear distinction is drawn between sovereignty as *suprema potestas* and what is called the *pouvoir étatique*, corresponding to the German doctrine of the *Staatsgewalt*. Generally, as we know, the term " sovereignty " is the one used in French doctrine.

In my opinion, we ought to consider in each case how in a community of States the various jurisdictions are shared between the paramount State and the subordinate State. We need only note that territorial waters are always under some sovereignty or other, whether that of the paramount State or of the subordinate State, which is regarded as the titular sovereign.

I will not, however, object to the addition of an explanatory epithet to the word

" sovereignty ". As far as territorial waters are concerned, sovereignty is really restricted in an exceptional way.

In conclusion, the Finnish delegation is prepared to vote for the United States proposal, which does not greatly differ from the Norwegian and Swedish proposals. As has already been observed, however, the text of the United States proposal will have to be somewhat modified. It states : " The exercise of sovereignty . . . is subject to rules laid down in the present Convention, or, where no such rules exist, to the rules of international law ".

This text must be drafted in such a way as to show that the Convention itself forms part of international law, and accordingly we might amend it as follows : " Subject to the rules of international law, and, in particular, to those of the present Convention ", or : " Subject to the rules of the present Convention, or, where no such rules exist, to the other rules of international law ". That, however, is a matter of drafting, and, as regards procedure, I support the proposal of M. Gidel.

M. Goicoechea (Spain) :

Translation : I support the view set forth in the United States and French proposals. In my opinion, the line of demarcation between the powers of the Committee and those of the Drafting Committee is quite clear. The Committee must lay down definite fundamental principles for each clause of the Convention, and the Drafting Committee will have to draw up an adequate text.

Are we agreed as regards the fundamental principles of the clause we are discussing? I think we are. These principles are three in number.

The first is the affirmation of the rights of sovereignty which the coastal State exercises over its territorial waters. The fear has been expressed that the word " sovereignty " is inconsistent with the principle of freedom of navigation. I think that these fears are unfounded, and I will give a few examples showing that, in point of fact, the contrary is the case. The State exercises complete and exclusive sovereignty over the air-space ; yet the Convention of 1919 on Aerial Navigation definitely lays down that all States have freedom of navigation in the air-space.

The State exercises its sovereignty over its navigable national rivers ; yet the Convention of 1921 definitely lays down the principle that everyone has freedom of navigation on national rivers of international concern.

As the French delegation has said, the word " sovereignty " is an absolute term that is perfectly consistent with all the limits laid down in the present Convention, with existing treaties and with international customary law. I think we may say we are in agreement upon this first principle of sovereignty.

As regards the second principle, the rights of sovereignty correspond to the power exercised by the coastal State over the national territory within the limits laid down in international law.

In thus incorporating territorial waters in national territory, we are not doing anything new, since the Convention of 1919 on Aerial Navigation clearly contemplates such a process. It states as follows :

> " For the purpose of the present Convention, the territory of a State shall be understood as including the national territory . . . and the territorial waters adjacent thereto."

Now, as regards the third principle ; in consequence of this incorporation of territorial waters in the national territory, the line separating the belt of territorial sea from the high sea represents the maritime frontier of the State.

That is a consequence of the principle laid down by the Convention on Aerial Navigation and repeated in the United States proposal. The powers exercised by the State over its territorial waters are the same as those it exercises over its own territory.

I think it would be a sound procedure to ask the Committee to vote on these three principles. As they are clearly recognised in the United States proposal, I may say that I shall vote for that proposal.

M. Sépahbody (Persia) :

Translation : I will not enter into a discussion of the advantages of retaining the word " sovereignty ", as the distinguished speakers who have preceded me have explained them most clearly and precisely. I think, however, it would be desirable to make known my Government's view on this subject. My Government states explicitly that the word " sovereignty " should appear in the actual text of the Convention we propose to draw up.

M. Spiropoulos (Greece) :

Translation : It seems to me to be generally agreed that the United States proposal should be referred to a Drafting Committee. The Czechoslovak delegate has proposed that we should not lay down an absolute principle of sovereignty, but should prescribe the specific rights of the coastal State. That is, in point of fact, the object of the Greek Government's proposal.

My Government set forth its point of view in a letter dated December 3rd, 1926.

According to the Czechoslovak delegate's proposal, the coastal State should be regarded as possessing certain specific rights. We might say that the coastal State possesses such and such rights. Suppose, however, that a coastal State commits an act which is not recognised as in accordance with those rules and those rights. What will happen? Recourse will have to be had to international law, and in that case it will be necessary to assume the existence either of the freedom of the seas — which seems to be contrary to international

law — or of the sovereignty of the State over the territorial sea.

We thus come to precisely the same position as under the United States proposal, and, accordingly, it would be better to say that the coastal State possesses sovereignty over the territorial sea.

The Greek Government would have preferred the converse principle, namely, the freedom of the seas, to be recognised, the coastal State being granted certain specified rights.

As my colleague, the Czechoslovak delegate, will realise, however, we are in a minority ; and, as I admitted two days ago, the minority cannot claim to secure the acceptance of its views.

For all these reasons, I wish to say that I support the proposals of M. Gidel and Dr. Schücking, and I also agree with the United States delegation's proposal.

I agree that the question should be referred to a Drafting Committee, but I think it would be preferable to examine other questions first, so that that Committee's work may form a small but complete whole.

As regards the wording of the United States proposal, I think that the observations made yesterday by the Roumanian delegate were quite sound. To say that the exercise of State sovereignty is subject to the rules laid down in the present Convention, is, in my opinion, a pleonasm.

Obviously, a right arising out of a Convention cannot be exercised except under the Convention itself. Moreover, it is redundant to say : " or, where no such rights exist, the exercise of sovereignty is subject to the rules of international law ". Sovereignty certainly cannot be exercised except subject to international law.

As, however, the majority has already expressed itself in favour of this wording, I will not press the point, and I too will accept the conclusions of the Drafting Committee.

M. Raestad (Norway) :

Translation : I shall be very pleased to vote for the French delegation's proposal.

I think that, as M. Gidel has already said, the United States proposal does not conflict with the Norwegian proposal, because the notion of territory is a consequence of the exercise of sovereignty ; so that, if we use the term " territory ", we have not really introduced anything new. For that reason I prefer my own formula ; but, as there is no difference, I accept the French proposal.

M. de Ruelle (Belgium) :

Translation : The Belgian delegation, being the author of an amendment which has provided food for discussion since yesterday, feels bound to explain its present attitude towards both the form and the substance of the question.

As regards the form, we can fully accept M. Gidel's suggestion that the Committee's opinion should be taken on the fundamental questions under discussion, with a view to enabling the Drafting Committee, when appointed, to begin its work in due course.

The Belgian delegation can also support M. Gidel's suggestion to put to the vote the Norwegian proposal as amended by the United States delegation.

As regards the substance of the question, we can, like the French delegation, give our support to that formula.

Although in our amendment we wished to discard the word " sovereignty ", it is not because that word, used to define the regime of territorial waters, constitutes a legal error ; far from it. On the contrary, we think that the State possesses rights of sovereignty over its territorial sea. But, as one of our colleagues very rightly said, the word " sovereignty " is often used in a somewhat mystic sense, and conclusions may be drawn from it regarding which we feel some misgivings.

A State possesses rights over the territorial sea. That is clear ; but it also has obligations, and here arises the danger of merely affirming sovereignty. Take one aspect of the question as an example — that of the right of merchant ships to pass through territorial waters. In this respect, territorial waters constitute the means of access to ports and rivers. I do not think — and this is one of the considerations which led to our amendment — that the regime of navigation can be less free or have fewer guarantees in territorial waters than on international rivers.

When the regime of waterways of international concern had to be laid down, the starting-point taken was an extreme one, as in the case of the Belgian delegation's amendment. I take this starting-point from French legal literature. It is an old decree, dating from the end of the eighteenth century, laying down that international rivers are the common property of the collectivity of States. When the Congress of Vienna made the law laying down the regime of international rivers, it did not reproduce the formula of the French decree, but took one which, without using — either to accept or exclude it — the word " sovereignty ", really makes a waterway of international concern actual common property. The Congress of Vienna stated that international rivers must be free as far as the open sea. The territorial waters giving access to waterways of international concern must not, therefore, be subject to a regime less liberal than rivers.

The wording proposed by the Norwegian delegation and amended by the United States delegation meets the point of the Belgian delegation's amendment. The wording we have before us does not say, like Basis of

Discussion No. 1, " A State possesses sovereignty over a belt of sea round its coasts " ; but " The exercise of sovereignty (in this belt, is subject to the rules laid down in the present Convention, or, where no such rules exist, to the rules of international law ". That is quite another thing, and accordingly we can accept it.

The effect of the Belgian delegation's amendment has also been — and this will console us for having taken up the Committee's time by submitting it — the inclusion of the following sentence in the United States proposal : " The territory of the coastal State includes a belt of sea as defined in Articles . . . " This sentence is of importance, because it is not enough to say that a State has sovereignty over its territorial waters ; we must say that those waters constitute a part of the territory — this with a view to solving various problems of international law which may arise, particularly in connection with the passage of vessels through territorial waters.

Obviously, we cannot, at the beginning of the progressive codification of law, solve all the problems to which the territorial waters question may give rise ; but we must lay down general principles from which conclusions may be drawn in regard to such cases of practical application as may occur.

In brief, the Belgian delegation is prepared to support the United States proposal when the vote is taken.

M. Giannini (Italy) :

Translation : As we are about to vote, I should like to know whether M. Gidel has put forward a proposal different from mine.

The Chairman :

Translation : I think that, if any difference exists, it is not very great. M. Gidel proposes that we accept in principle the United States delegation's amendment and refer it to a Sub-Committee to be appointed in due course. The Sub-Committee in question will not be simply a Drafting Committee ; it will have to study very fully the questions connected with the United States delegation's amendment, with the assistance of the Norwegian and Swedish proposals and with due reference to the discussions which have taken place here.

M. Gidel (France) :

Translation : The Chairman has fully understood my intention. I will only venture to add that the Sub-Committee which is to be formed will require very definite directions. These will be supplied by the Committee's discussions as a whole and by our voting. The Sub-Committee must base its work, not merely on the impressions it has received from the discussions, but also on actual texts.

I have suggested to the Committee that the United States amendment — which is very similar to the Norwegian amendment, as the Norwegian delegate himself said just now — may furnish in regard to Basis No. 1 the foundation for the work of the Sub-Committee which will be appointed when the Chairman considers that the time has come.

M. Giannini (Italy) :

Translation : After listening carefully to what M. Gidel said, I felt that there was no difference between his point of view and mine. I proposed that the two formulas should be referred to the Sub-Committee, while the Belgian proposal should be discarded, at all events as far as the rejection of the principle of sovereignty was concerned. Part of the Belgian proposal, however, deserves to be taken into consideration.

M. Gidel now explains that we must take the United States proposal as basis ; but, as I said just now, that proposal is not the same as the Norwegian delegation's proposal.

M. Gidel (France) :

Translation : But the Norwegian delegation agrees with the United States delegation.

M. Giannini (Italy) :

Translation : Yes, but I myself consider that there is a difference. The United States proposal begins with the words : " The territory of the coastal State includes a belt of sea . . . " I cannot accept this conception of the territorial sea as an accessory of the territory. M. Gidel says : " The territorial sea is submerged territory ". If that is so, we cannot call it an accessory of the territory ; the State has the same rights over the territorial sea as over its territory. I draw the Committee's attention to this point in order that we may be quite clear in regard to the vote we are about to take.

It has been said more than once that sovereignty over the territorial sea is not the same as the State's sovereignty over its territory. The conception of sovereignty is very elastic. We cannot regard sovereignty — not even the sovereignty of a State over its territory — as absolute. In this connection it may be said that the conception of sovereignty is elastic, like that of ownership. Sovereignty, like ownership, changes in time and in space. We may limit sovereignty, whether in the principles of international law or in the Convention, but it will still remain sovereignty.

I think, therefore, that we may confidently vote for the principle of sovereignty, while recognising such limitations as may be considered necessary. The Paris Convention speaks of " full and entire sovereignty " ; but the question of " innocent passage ", and other limitations too, immediately arise. Yet that did not prevent the principle of full and entire sovereignty from being laid down.

We may therefore vote for this principle ; we must not say that we are taking such and such a formula as a basis. We must take both formulas as our basis, subject to such drafting amendments as may be necessary.

The point I wish to emphasise is that I cannot possibly agree that the territorial sea should

be regarded as an accessory of the State territory. The Belgian proposal is clearer on this point ; it states : " The territory of a State extends to a belt of sea round its coast. This belt constitutes the territorial sea. "

In conclusion, I ask that we should take as a basis the formulas proposed by the United States and Norwegian delegations, with which the Swedish delegation associates itself.

Mr. Miller (United States of America) :

I wish to call attention to the proposal made in English by the delegation of the United States of America. That proposal reads as follows : " The territory of the coastal State includes a belt of sea as defined ". I admit that I also submitted a French text, but I trust that I shall not be held to the exact wording. Perhaps the word that is indicated " *comporte* " is not precisely the equivalent of the word " include ". That, I submit, is a matter for the Sub-Committee which is to be appointed by the Chairman.

I would like to repeat one sentence of the remarks I made yesterday as expressing the idea that was put forward, namely, that the territorial sea forms part of the territory of the coastal State.

The Chairman :

Translation : We have therefore simply to substitute the word *comprend* for *comporte* in the French translation.

I think there is a very general, if not unanimous, consensus of opinion in favour of accepting what we have agreed to call the French delegation's proposal.

If there is no objection, may I regard this as agreed ?

This proposal was adopted.

The Committee rose at 12.25 p.m.

FIFTH MEETING

Friday, March 21st, 1930, at 10 a.m.

Chairman : M. GÖPPERT

11. DETAILED EXAMINATION OF BASIS OF DISCUSSION No. 2.

The Chairman :

Translation : We will now discuss Basis of Discussion No. 2, which reads as follows :

> " The sovereignty of the coastal State extends to the air above its territorial waters, to the bed of the sea covered by those waters, and to the subsoil. "

There is an amendment on this subject submitted by the delegation of the United States of America.

Mr. Miller (United States of America) :

The delegation of the United States of America has submitted an amendment which it considers to be in accord with the decision which was taken unanimously by the Committee yesterday.

The text of the amendment is as follows :

> " The territory of the coastal State includes the air above the territorial waters, the bed of the sea covered by those waters, and the subsoil. "

The view which I have already put forward was that the territorial sea or the territorial waters (to use the two expressions which have been suggested) form a part of the territory of the coastal State, and I think that this is the same idea which has been expressed by other delegations, perhaps, in particular, yesterday by the Vice-Chairman of the Committee, the delegate of Spain.

I wish to point out that the territory of the State, while sometimes envisaged merely as the surface, is more than that — the air, the soil, the subsoil, are all a portion of the territory of the State, and, furthermore, it is perfectly proper to say that the waters of a country are a portion of its territory. A lake is as much the territory of a State as is the land surrounding it. In my view, therefore, the air, the water and the subsoil form one and an undivided portion of the territory of the State.

I would point out, further, that a ship, while passing through the water, passes also through the air. The seaplane uses first one medium and then the other ; so does the submarine. There is no division, for the purposes of the State, between the air and the water, or even between the water and the subsoil in the case of the use of the subsoil.

M. Raestad (Norway) :

Translation : I must declare at once that I am unable to accept either the text of the Basis of Discussion or the amendment submitted by the United States delegation.

In considering the conception of territory, it must be remembered that, in legal terminology, the word " territory " is not applied merely to certain elements of a physical character, such as molecules of water or molecules of any other kind. In legal

terminology, the word "territory" indicates the physical medium in which certain human activities are exercised. That is not an invention of my own, but the result of legal researches which have been pursued during a number of years in Germany, France and America.

The text of the Basis of Discussion, like that of the amendment proposed by the United States delegation, errs in seeking to apply the term "territory" to the physical elements. The delegate of the United States very clearly brought out the point at issue when he said that a ship which is passing through the water also makes use of the air.

There are two kinds of sovereignty and two kinds of territory. There is the air, considered as a physical medium for air navigation, and in regard to that point rules have been laid down in the Convention on Aerial Navigation. There is sovereignty which is far more extensive than that, which relates to the territorial sea.

What, indeed, is the "territorial sea"? It is a legal term ; it is an elliptical expression, indicating a physical medium of action ; and this medium does not consist only of the water but of the air-space above it and the bed of sea beneath it. These form a complete whole. To seek to legislate for the territorial sea in one article and for the air or the bed of the sea in another is an offence against juridical logic. The air-space above the water and the bed of the sea beneath it are both parts of the conception of the territorial sea. The distinction which appears both in the Basis of Discussion and in the proposal of the United States delegation might, if adopted, even be the cause of errors.

If the Committee thinks it essential to have a text on this subject I think it should read :

> "For the purposes of the present Convention the inland and territorial waters include the air-space above them and the bed of the sea beneath them."

We should thus be making a correct statement, and we should at the same time be explaining what the concept of the territorial sea includes, the whole concept being governed by the rules of international law.

As regards the air more particularly, viewed as a means of aerial locomotion, if the Committee thinks it desirable to insert something on this subject in the Convention, let us by all means do so ; but, if this is not regarded as absolutely essential, it would be better not to do so, in order to avoid complicating our texts, since there are already in existence rules of international law and Conventions which regulate aerial navigation.

Finally, I wish to refer to the subsoil covered by the inland and territorial waters. What is, from a legal standpoint, the source from which States derive their rights over the subsoil beneath their territorial waters? The answer is that these rights are derived from their possession of the land territory. Accordingly, in my view, we ought to say that "the land territory includes the subsoil covered by the inland and external waters of the coastal State up to the limit of such waters ".

It is rather putting the cart before the horse to say that the rights of the State over the subsoil are derived in any way from its rights over the territorial sea. It would seem, indeed, more correct to say that it is the breadth of the territorial sea which determines the distance, measured from some point on land, up to which the State may utilise the subsoil.

I thought it necessary to offer these few observations because they relate directly to the texts which are before us. This question is so complex from a juridical point of view that I thought it better not to submit a written amendment before hearing the views of my colleagues.

In conclusion, may I also draw your attention to the floating islands which exist in some regions and to the vast areas of ice which may be used for other purposes than navigation? These questions are rather outside the existing text, but we ought, perhaps, to consider them.

M. Meitani (Roumania).

Translation : During the discussion on the first Basis, the United States delegation submitted an amendment which recognises the sovereignty of a State over its territorial waters. The amendment states that this sovereignty "is to be exercised in conformity with the rules of the present Convention". The United States delegation therefore recognises the sovereignty of the State over its territorial waters. I cannot, therefore, understand why it should be unwilling to recognise the same right over the air-space above those waters and over the bed of the sea beneath them.

The amendment proposed by the United States delegation mentions the territory of the coastal State. It is indisputable, and universally recognised, that States possess the right of sovereignty over coastal territory. The United States delegation recognises the existence of this same right over the territorial sea. Why does it take a different view in regard to the space above and below the territorial waters, more especially as there is a Convention relating to air navigation which recognises that a State possesses the right of sovereignty over the air-space above its territory?

Once it is conceded that the bed of the sea, the air-space, and the subsoil are part of the territory of the State — as is indeed admitted by the United States delegation — the same principle must be applied to the submerged territory, as M. Gidel so well expressed it in his speech yesterday. Since it is admitted that a State possesses sovereignty over its territory, and over the territorial sea — which forms part of the State because it is submerged territory — and since there is in existence a general Convention concerning aerial navigation which provides for this sovereignty of the State, why should the territorial sea, which is part of the State, and why should the air-space above this territorial sea and

the subsoil beneath it not be subject to the same right of sovereignty?

It seems to me hardly logical to admit that the State possesses a right of sovereignty over its territorial waters and not to recognise that it possesses the same right over the air-space and over the subsoil, subject, of course, to such right being exercised in conformity with the terms of the Convention.

For these reasons, I consider that the rule underlying Basis No. 2 is more correct. I will not, however, press this point further, and, if the Drafting Committee accepts the United States delegation's amendment, taking into consideration the Norwegian delegation's observations, I shall not oppose that decision.

Sir Maurice Gwyer (Great Britain) :

I fully accept the principle which, as I understand it, is embodied in the amendment proposed by the delegation of the United States of America ; but I am not quite sure that the Basis in the form suggested by that delegation is really necessary now in view of the amendments which were made in Basis No. 1 yesterday.

The principle is that the belt of territorial water surrounding a State is to be regarded as an extension of its land territory, and, inasmuch as the sovereignty of a State over its land territory extends to the subsoil beneath and to the air above, that same principle must apply in the case of that portion of its territory which is covered by its territorial waters.

In these circumstances, it seems to me that the question is really one of drafting. As we have decided that Basis No. 1 shall be referred to a Sub-Committee for examination and for the purpose of combining, if necessary, the United States and Norwegian amendments, I suggest that the same course might be followed in regard to Basis No. 2 and the amendment suggested by the United States delegation, provided, of course, that the Committee accept the principle which I understand to be embodied in it, a principle on which I think the Committee is absolutely unanimous.

M. Sjöborg (Sweden).

Translation : Basis No. 2 deals with two points — the sovereignty of the coastal State over the air-space above its territorial waters, and the sovereignty of the coastal State over the sea-bed beneath those waters and over the subsoil.

It seems desirable, in the interests of clear discussion, to keep these two questions separate. The question of sovereignty assumes a different aspect according as we discuss one or other of these subjects, for the very good reason that, in regard to the first, we already have the international Convention of 1919 on Aerial Navigation, which has been accepted by a fairly large number of States. Thus, as regards the air, conventional rules already exist which are fairly generally accepted ; but there are, as yet, no such rules in regard to the other subject.

It is necessary, therefore, to preserve the above distinction, and I venture to suggest to the Chairman that the two questions should not be confused if the discussion is to continue. It would, in my view, be better, for the moment, to concern ourselves solely with the question of the air.

As regards this question, I have already referred to the existence of the Convention of 1919. It embodies a conception of sovereignty which is higher than that found in the present Convention. I mean that the sovereignty conceived in the Aerial Navigation Convention is subject to far less restriction than that contemplated by the present Convention, seeing that the right of innocent passage in the air is not recognised to the same extent as in the Convention we are now discussing. Let us, therefore, note for the moment that we are dealing with two widely different notions of the sovereignty.

The Convention on Aerial Navigation deals, not only with the air-space above the mainland of States, but also and expressly with the air-space above the territorial waters of States. The Convention in question thus establishes with the greatest precision the legal status of the air-space above the territorial waters. It was signed by a certain number of States ; subsequently other States acceded to it. It is clear that none of the States here represented that signed or acceded to that Convention would be able to admit in our Convention a conception of sovereignty over the air differing from that contained in the Convention to which they are already parties.

If, therefore, we find it necessary, in framing this Convention, to draw up a clause relating to the sovereignty of the State over the air-space above its territorial waters, this clause would need to be identical with that which we have already accepted. What purpose, then, would it serve? On the other hand, there are some States represented here which have not yet acceded to the Convention on Aerial Navigation.

If we refer, in regard to the sovereignty of a State over the air-space above its territorial waters, to the provisions of the Convention of 1919 and say that these provisions are also to be applicable to our Convention, we may encounter a very grave difficulty, namely, that some of the States represented here will find it impossible to accede to our Convention for the excellent reason that they do not intend, for reasons of their own with which we are not concerned, to accede to the Convention on Aerial Navigation.

For all these reasons, I think it would be wiser to say nothing at all in regard to sovereignty over the air. The United States amendment — perhaps foreseeing this very difficulty — refrains from referring to sovereignty. At first sight there seems to be no difficulty in the adoption of such a proposal ; but if we examine it more closely we see that it presents certain dangers.

In regard to Basis of Discussion No. 1, we agreed that the definition of sovereignty over the territorial waters should be understood as being subject to the restrictions provided in the Convention and in the other rules of international law ; but it is beyond doubt that the sovereignty over the air is not subject to the same restrictions as the sovereignty over the territorial waters, since, for instance, there is no right of innocent passage.

If we refer, in the first place, to the sovereignty of a coastal State over the territorial waters, and if we then describe the air-space above those territorial waters as forming an integral part of that territory, without saying anything at all about the right of sovereignty over the air, might it not be deduced that the sovereignty of the State is the same over the air as over the water ; and, as that conclusion would be erroneous, should we not be provoking misunderstandings ?

I think, therefore, that we ought not to accept the United States amendment ; and I do not see how — for the reasons just stated — we can introduce any provision whatsoever relating to the air-space.

M. Makowski (Poland) :

Translation : I consider that the United States proposal is perfectly correct from a legal point of view. As the Norwegian representative has already observed, the conception of territory is not the same from a legal as from a geographical standpoint. The recent publications of jurists such as Henrich, Donato Donati and others have abundantly proved that territory, from a legal point of view, is the competence of the State considered in terms of space, its *raümlicher Geltungsbereich*, as the German jurists say. For that reason, I consider the United States proposal as perfectly logical from a legal point of view.

Nevertheless, as the words used in Basis of Discussion No. 2 are an almost exact reproduction of those employed in the Convention on Aerial Navigation, I think we should be wise to retain a text which has already been consecrated by an international agreement.

Abd el Hamid Badaoui Pasha (Egypt) :

Translation : The proposal submitted by the United States delegation appears to be absolutely in harmony with the text we adopted yesterday. Basis of Discussion No. 1 stated the idea in terms of sovereignty. For various reasons, we wished to avoid referring too directly, or too bluntly, to the question of sovereignty ; we preferred to speak in terms of territory, leaving it to be supposed that the question of sovereignty had incidentally been solved. The second part of the text we adopted emphasised the relative character of the sovereignty referred to in the first part of Basis No. 1.

Having adopted the United States formula yesterday, we could not to-day adopt Basis of Discussion No. 2 in its original form. I do not, therefore, agree with those delegations who consider that Basis No. 2 ought to refer to sovereignty. The first part, containing the definition of territory, is retained in the American proposal and extends it, first to the air-space and then to the subsoil ; but the other part of the Basis of Discussion is necessarily maintained. I must, however, support the objection of the Swedish delegation to the mention of the air-space. I consider that such a mention is superflous in a Convention dealing with territorial waters, not only because one Convention should avoid repeating what has been already provided in another Convention, but also because the regime of sovereignty in regard to the air is utterly different from that which relates to the water.

Taken as a whole, the Bases of Discussion are in no way whatever concerned with what happens in the air. They assume that all such questions have been settled by the existing Conventions on air navigation. A reference to the air-space in our Convention can only be accounted for by a desire for completeness : after dealing with the question of territorial waters it seemed, in fact, desirable to refer to their surroundings, both those above and those beneath.

In my view, we should not be too much influenced by this desire for completeness, more particularly if it is going to lead us into contradictions and ambiguities, as the Swedish delegation has quite rightly pointed out.

I see no objection to accepting the proposal submitted by the United States delegation if we omit the part relating to the air, since that has no connection whatever with the subject of our Convention.

We might say that the territory of the State includes the sea-bed beneath the territorial waters and the subsoil.

Any enterprise for the exploitation of the subsoil has a clear connection with the utilisation of the territorial waters. The subsoil cannot be utilised without crossing or utilising the territorial waters. It cannot be argued that the subsoil beneath the territorial waters, because it is land, is really connected with the idea of territory.

To sum up, at the risk of differing from some of the delegates who have spoken, I think that it is necessary to supplement the Basis of Discussion adopted yesterday by the text presented to us to-day, omitting only the portion which relates to the air.

M. Giannini (Italy) :

Translation : Three questions have been raised by our examination of Basis of Discussion No. 2.

First, a fundamental question : Are we agreed on the principle ?

Secondly : If we are agreed on the principle, is it necessary to insert a special provision in the Convention ?

Thirdly : If it is necessary to insert a special provision in the Convention, what form should we give it ?

These are the three problems which we have to consider.

The question of the air-space must be kept entirely distinct from that of the sea-bed and the subsoil.

As regards the first point, namely, the air-space, the Committee will observe that the problem is fully regulated by positive law. I would even go so far as to say that, in this case, we are dealing with a problem which has been completely regulated either by conventional law or by the domestic laws of States, which may be considered as common law.

As regards positive law, we already have the Convention of Paris, to which twenty-seven States are parties. Reference has been made here more than once to Article 1 of this Convention which reads :

> " The High Contracting Parties recognise that every Power has complete and exclusive sovereignty over the air-space above its territory."

The remaining portion of this article confirms the principle of the sovereignty of the State over the territorial waters.

The Ibero-American Convention to which a number of States — Spain, Portugal, Latin America — have acceded, and which has been ratified by eight countries, states in Article 1 that the High Contracting Parties recognise that every Power has complete and exclusive sovereignty over the air-space above its territory.

In the latter part of this article, mention is also made of the territorial waters.

Finally, the Pan-American Convention, to which the States of America are parties, recognises that each State has complete and exclusive sovereignty over the air-space above its territory and its territorial waters. I am quite aware that a number of States have not yet acceded to the Convention of Paris. Following on the Protocols of June and December 1929, we shall perhaps see great States like Germany, Spain, etc., acceding to the Convention.

We have, therefore, in positive law, rules which have entirely settled the problem.

As regards States which have not yet acceded to that Convention, their internal law contains provisions drawn up practically in the same terms ; that is to say, according full and complete recognition of the principle of sovereignty over the air-space, including the space situated above the territorial waters.

To sum up, the machinery of all these Conventions shows us that territorial waters form part of the territory. The problem is accordingly settled, and we do not require to refer to it in the present Convention. In the Convention which we are now preparing, and which is intended to fix the juridical status of territorial waters, there is no need whatever to make special reference to the air-space.

As regards the second point, which refers to the subsoil, I have some further observations to offer to my colleagues, and I am sure that Professor Schücking, who was a member of the Committee of Experts, will correct me if necessary. We have on the agenda the question of the rules which should govern a Convention on the exploitation of the marine subsoil. Is that Convention to be based on the principle of liberty, or on that of sovereignty? And is it to be subject to certain limitations of a general character? I have no idea ; and no one is at present in a position to say on what course we shall decide.

Everyone will probably agree to adopt the conception of full and complete sovereignty; but that is a matter for a future Convention, and must be expressly reserved, seeing that we are now only at the beginning of progressive codification.

We are therefore confronted with two series of problems. On the one hand, problems which have already been settled internationally, with rules of positive law and common law, comprising all the points we can possibly consider. On the other hand, we have problems which have not yet been solved in positive law, but which will be solved in the future.

That being so, what formula, what rules should we provide with regard to these two series of problems? I think we should do practically nothing. We must not attempt to forestall future decisions, but must allow the matter to follow its normal course of development.

For all these reasons I am in favour of replying negatively to the first question I have raised.

There is, however, one consideration of a practical nature which might lead to a concordance between the existing international air Conventions and the future Convention on the exploitation of the subsoil. We should seek, therefore, to find a somewhat liberal formula, which would emphasise this aim of co-ordinating the existing Conventions and the Convention which will subsequently be concluded.

In conclusion, I wish to make a practical proposal, namely, that the Committee should first of all decide whether any rule can usefully be formulated on this subject.

If the Committee decides in the negative, we shall have finished with the subject.

If, on the contrary, the reply is in the affirmative — if the Committee thinks that something ought to be done — let us refer the matter to the Drafting Committee, whose task it will be to discover the best formula. The latter will have to be carefully studied and must not in any way commit States that are not already bound by international Conventions. It is quite evident that, in this case, we can say nothing more than, nothing less than, and certainly nothing contrary to, the engagements which have already been undertaken by several States represented at this Conference.

M. de Armenteros (Cuba) :

Translation : In my view, Basis of Discussion No. 2 is a continuation of Basis No. 1, which we recently examined. We have given a clear,

accurate and precise definition of the maritime territory of the State, and we have said that it exercises sovereignty over that territory. Why should we repeat it? There is no need to reaffirm in Basis No. 2 what has already been said in Basis No. 1.

The amendment proposed by the United States delegation says : " The territory of the coastal States includes the air-space, etc. " In my view it should read : " The territory of the coastal State *also* includes the air-space, etc. "

Our eminent colleague M. Giannini has said, with great sagacity, that it was unnecessary to refer in this article to the air-space. The question is, indeed, already regulated by the Convention of Paris, the Pan-American Convention and the Ibero-American Convention.

I therefore suggest that we should simply add the word *also* in order to establish a closer connection between Articles 1 and 2 of the Convention.

Dr. Schücking (Germany) :

Translation : Allow me to make a brief observation, which is in the nature of a reservation to Basis of Discussion No. 2.

A few years before the war the Institut de droit international drew up regulations concerning the legal status of the air-space. These regulations began with the words : " The air is free ".

In view, however, of the recent developments of air navigation the air is no longer free.

Basis of Discussion No. 2 seeks to sanction and confirm this situation, which ought really to be modified, at any rate as regards straits.

If the Committee decides to accept Basis No. 2 in its present form, I shall have to return to this question when we come to discuss Basis No. 15, which deals with straits.

M. Goicoechea (Spain) :

Translation : I have listened most carefully to what has been said during the discussion on the United States proposal. I agree with the general intention of that proposal, subject to certain reservations which I shall proceed to state.

This proposal serves, as the French delegation desired, to define the question more closely. As M. Giannini has said, there are several fundamental points to examine.

The first relates to the sovereignty of the State over the air-space. Like M. Giannini, I consider that this question has already been fully solved ; but I think that M. Giannini, when he quoted various clauses of the Convention of 1919 on Aerial Navigation, omitted one which appears to me of decisive importance in this matter. The Convention of 1919 not only lays down that the State exercises sovereignty over the air-space, but it adds that the territory of the State must be understood, for the purposes of the Convention, as including the national territory and the territorial waters adjacent thereto. The United States proposal says : " The territory includes ", and the Convention of 1919 says : " The territory shall be understood as including ". There is only an insignificant shade of difference between these two expressions, and it might be removed by using the exact words of the Convention of 1919.

The second point relates to the rights exercised by the State over the sea-bed. In my view, it is absolutely impossible to consider the national territory apart from the territorial waters in connection with the bed of the sea. Both the French and Spanish administrative laws recognise the existence of a so-called " maritime land zone ". This zone is incorporated in the national territory ; it also forms part of the territorial waters. It is impossible to regulate the legal status of works, or the extent to which they may be legitimately carried out, in this zone if the territorial waters are considered apart from the national territory.

The above argument applies also in regard to the subsoil. Mining operations conducted by different countries begin within the national territory and continue through the " maritime land zone ", sometimes as far as the high seas. While the national territory is under the sovereignty of the State, and while that is also true as regards the " maritime land zone ", in the high seas, on the contrary, the rights to be considered, as regards objects subject to joint user, are those of the first occupant. To sum up, I consider that the United States proposal, the general sense of which is similar to that of the clause in the Convention of 1919, is alone suitable for insertion in Basis of Discussion No. 2.

This Basis suffered from the defect of employing only the word " sovereignty ". It appears to me that this word is inadequate in regard to the sea-bed and the marine subsoil. It will therefore be necessary — not only owing to the need of conforming to the terms of the Convention of 1919, but also in order to bring our Convention into line with the internal administrative laws of all countries — to say that the national territory includes, or shall be deemed to include, the territorial waters, and that, in consequence, the State exercises the same powers over the sea-bed and the marine subsoil as over the national territory.

M. Cohn (Denmark) :

Translation : The Danish delegation fully agrees with the proposal of the British delegation to refer the Basis of Discussion No. 2 to the Drafting Committee.

As, however, several delegations have submitted amendments, I venture to offer one suggestion for the consideration of the Drafting Committee.

The Swedish delegation has very justly pointed out that there seems to be some contradiction between Bases Nos. 1 and 2, owing to the fact that Basis No. 1 refers to a sovereignty which is qualified in a particular way, whereas Basis No. 2 merely refers to the territory of the State, which includes the air-space, without referring to the question of sovereignty. Some doubt might arise as to whether the sovereignty is of the same kind

in both cases. Then the Norwegian delegation has expressed some doubt as to whether a State possesses sovereignty over the subsoil ; and the Roumanian delegation has asked why the term " sovereignty " does not appear in Basis No. 2.

I propose to combine these two Bases of Discussion and to have only one rule, which would read as follows :

" The territory of the State includes a belt of sea as defined in Articles . . . and described in the present Convention as its territorial waters. It also includes the air-space above the territorial waters, and the sea-bed covered by those waters, and the subsoil.

" The exercise of the sovereignty of the coastal State shall be subject to the rules laid down in the present Convention and in the other Conventions in force between the High Contracting Parties, or, in their absence, to the rules of international law."

I request that my proposal be referred to the Drafting Committee for consideration. I believe that it will meet the requirements of the different delegations who have expressed their views this morning.

M. de Magalhães (Portugal) :

Translation : Various delegations have proposed the omission of Basis No. 2. I consider, on the contrary, that it should be retained for the reasons which I will now state.

As the United States delegate has pointed out, the territorial waters, the air-space, the sea-bed and the subsoil constitute a complete whole, and it would be difficult to treat these different elements separately, at any rate as regards the exercise of the right of sovereignty. In order to exercise this sovereignty in the territorial waters in a satisfactory manner, a coastal State must also possess sovereignty over the air-space, the sea-bed and the subsoil. I am further of opinion that this Convention ought to contain a clause designed to link it to Conventions already existing or hereafter to be concluded.

The eminent delegate of Sweden has observed that the conception of sovereignty in the Convention of 1919 concerning Aerial Navigation differs from that in the present Convention. I do not agree with him. On the contrary, I believe that the conception of sovereignty is always the same, and I think everyone will agree that no sovereignty is ever absolute ; even on the national territory of the State, this sovereignty is subjected to restrictions and limitations by international law.

It has been suggested that all reference to the air-space should be omitted from this Basis of Discussion, on the ground that this question is already regulated in the existing Convention. But we are not seeking to modify that Convention ; on the contrary, our desire is to establish a connection between the two Conventions.

As regards the air-space, the coastal State possesses sovereignty ; but it is a sovereignty subject to the limitations already contained in existing Conventions, in the case of those States which have ratified them. As regards other States which have not accepted them, this sovereignty is subject to the restrictions imposed by international law. As regards the territorial waters, the coastal State possesses sovereignty ; but that sovereignty will be subject to the limitations provided in the Convention we are now preparing. As regards the sea-bed and the subsoil, the same sovereignty exists, and it is subject to the limitations imposed by international law.

For these reasons I desire the maintenance of this Basis of Discussion, provided that the text is brought into line with that of Basis No. 1. That must be the work of the Drafting Committee. The latter must also discover a formula to express the connection between the present Convention and other Conventions already existing or hereafter to be drawn up.

I wish to add a few words with regard to the proposal of the Danish delegation to amalgamate Bases Nos. 1 and 2. I cannot agree with that suggestion, because it follows from what I have just said that the clause relating to territorial waters cannot be identical with those relating to the air-space, the sea-bed and the subsoil. In regard to these three elements, it will suffice to affirm the sovereignty of the State ; whereas, in the case of the territorial waters, it will be necessary to say that the sovereignty of the State shall be exercised in conformity with the rules laid down in the Convention we are now considering.

M. de Ruelle (Belgium) :

Translation : I have very little to add to the arguments which have been advanced by the different delegations and which appear to me to have fully elucidated the subject of our discussion. I am convinced that the Drafting Committee will be able to find a formula to reconcile the different views expressed.

As regards the desirability or otherwise of making mention in our Convention of the air-space above the territorial waters, or of the sea-bed and the subsoil beneath those waters, no one could fail to be impressed by the important arguments put forward, especially those of M. Giannini, who considers that it would be better to say nothing than to insert something which would be necessarily incomplete.

We are engaged on work of progressive codification. I feel that it would be impossible for us to deal with all the subjects connected with the regime of the territorial waters. The question of chief interest is that of the air-space above the territorial waters.

As has been very truly observed, the question of the sovereignty of the State over the air-space above its territorial waters is one which has in the past been the subject of much controversy. This was more

particularly the case at the first Conference on Aerial Navigation, which met at Paris before the war. It was solved by the Convention of 1919, which was in its turn supplemented by the Convention between the Ibero-American countries. The Convention of 1919 affirms the principle of sovereignty in very absolute terms and, in particular as regards the right of navigation of aircraft, it establishes a regime of severely curtailed liberty, which is far from that which we are claiming for navigation in territorial waters.

If we are going to deal with the question of the air-space, we must say something more than, or something different from, what is contained in existing Conventions. I am not sure whether we are called upon to deal with this question of air navigation, or if we should leave any action for the improvement of the existing regime to the initiative of the Commission for Air Navigation set up by the Convention of 1919; that Commission is practically permanent and studies possible improvements in the regime set up by this Convention. It has already acted in this sense by extending the regime established by the Convention of 1919, which legislated solely for the aircraft of the contracting States. Supplementary instruments to that Convention have been drawn up. If we are now going to deal with the sovercignty of the air-space above the territorial waters, our aim must be to produce something better than what already exists; for otherwise it would be wiser to do nothing.

As regards the sea-bed and the subsoil, I can well understand that it was originally intended to deal with them also. But now that we have accepted, in connection with Basis No. 1, a formula which adopts one of the two formerly conflicting doctrines in regard to the rights of the coastal State over the territorial waters — namely, the doctrine which assimilates the territorial waters to the territory of the State — we can extend its application, so far as is relevant, to the subsoil. Formerly, the question might lend itself to controversy, if the State were deemed to possess a kind of eminent domain, limited to its requirements for the protection of its territory. In that case, the right of the coastal State to appropriate the subsoil for purely economic ends might well be disputed. But that argument can no longer be invoked now that we have affirmed the other doctrine. Is it necessary, in that case, to say anything at all on the subject? It all seems to follow naturally from the principle, and if we allude to the point at all, I think we shall have to deal exhaustively with a very complex question, all the aspects of which we have not yet discerned.

M. Raestad (Norway):

Translation: The discussion in which we have been engaged has strengthened the opinion I had formed on arriving here this morning, namely, that the introduction of Basis No. 2 will only complicate the question without serving any useful purpose. These two first Bases come under the heading "Nature of the Territorial Waters". No one has ever raised any question as to the naturc of territorial waters. If we now introducc rules concerning the air, considered as a medium for air navigation, and rules concerning the subsoil, we shall be going beyond the limits indicated by the heading itself. As the Portuguese delegate has observed, we are really attempting to characterise the whole of the territory extraneous to the mainland of the State, and that is a very difficult task. If we begin our work of drafting a Convention on the territorial waters by laying down such wide rules, we shall complicate the situation and create difficulties in interpreting the provisions of the Convention. It is a mistake to try to explain questions which are already clear in themselves. I therefore agree with the essential portion of M. Giannini's proposal, namely, the pure and simple omission of Basis No. 2.

I would add that, if, later on in our work, we consider it necessary to say something more, either as regards the relation between our Convention and that of 1919, or as regards, say, the subsoil, we might insert it in the final clauses of the Convention, or in an annexed declaration, or in the report. I think that this suggestion should meet M. Giannini's idea of establishing a connection between the two instruments, if that is thought necessary.

M. Sitensky (Czechoslovakia):

Translation: I desire to endorse every word that has been said by the distinguished delegate of Italy. Indeed, on first perusing the questionnaire sent to the Governments, when the Bases of Discussion were being determined, I failed to understand why it was sought, in this Convention, to regulate the sovereignty over the air-space above the territorial waters, and over the subsoil.

In my view, we are seeking to regulate the conditions of maritime navigation in the territorial waters. The question of sovereignty over the air-space and over the subsoil has no connection with maritimc navigation. The other Bases of Discussion are solely concerned with that question, so that there is no link between Basis No. 2 and the remaining Bases of Discussion. I therefore consider that no such provision need appear in our Convention, and I can only support the proposal of the Italian delegation.

Mr. Miller (United States of America):

From the discussion that has taken place, I cannot find that there is any objection to the principle stated in the United States proposal, or, if you prefer, to the statement of law embodied in that proposal. I take it that no one here disputes the fact that the territory of the coastal State includes the air above the territorial waters, nor the fact that the territory of the coastal State includes the bed of the sea, nor the fact that the territory of the coastal State includes the subsoil. It seems to me that, after admitting that statement — perhaps not in language but in principle —

the objections only concern the question whether or not we shall say so. While we all admit the principle, some of the delegates who have spoken think we should not definitely state that it is true.

I am not going to quote the work of Talleyrand again, but I think it is quite applicable in this case. It seems to me that the situation will be much more difficult and complicated if we omit such an admitted statement as this, if we try to say that we are only dealing with territorial waters and with that portion of the air-space through which a ship passes, and that we are not dealing with another zone of air above that. How can we make such a division? Are we to say nothing about anchorage in Basis No. 19? The ship does not anchor in the water. We are going to meet this point also in connection with Basis No. 19 when we discuss the question of innocent passage; we shall certainly have to face the whole question of the territorial sea in the broad sense of the term.

I quite agree with the view that we are not here to make rules for the air, that we are not here to draw up detailed regulations for the subsoil; but it seems to me that all the detailed questions relating to those two subjects may be perfectly covered by a general provision, to which I do not think there would be the slightest objection, to the effect that no provision of the present Convention should prejudice the application of any other previous Convention. That or some other similar clause will admit all the provisions of the Air Conventions which have been concluded among many States or which are now in process of being concluded.

Secondly, while I agree that the matter should be referred to the Drafting Committee, I think that, before that is done, this Committee should take a vote on the question of principle; that is to say, on the inclusion in the Convention of Basis No. 2 as amended by the United States of America.

M. Gidel (France):

Translation: The French delegation considers that the United States amendment will greatly assist in elucidating the subject under discussion, and fully endorses the principles which it embodies.

I will not repeat the arguments used by the speakers who have addressed you in that sense, or, just now, by the United States delegate himself. But I fully agree with those who desire to allay the scruples of some of our colleagues, and the text which I now venture to propose for reference to the Drafting Committee is intended as a compromise. This text would read as follows:

"Subject to the provisions of Basis of Discussion No. 2, measures concerning the admission, circulation and condition of foreign aircraft on the surface of or above the waters referred to in the aforesaid Basis of Discussion shall be promulgated by the High Contracting Parties, so far as they are respectively concerned, provided, however, that they conform to the provisions of general or bilateral international conventions which relate to these matters and to which they are or may hereafter be parties."

The reference is, of course, to Basis No. 2 as worded by the United States delegation. The place where this clause or some similar text should be inserted would have to be decided. The Norwegian delegate proposed just now that a general clause should be inserted at the end of the Convention, or else that a mention should be made in the report. The French delegation would prefer a clause, in regular form, in the Convention itself.

M. Spiropoulos (Greece):

Translation: It is very remarkable to find — as we nevertheless do in this case — the delegate of a nation like Czechoslovakia, which possesses no maritime coast, expressing the same view as the delegate of a country like Greece, which, in proportion to its territory, possesses a considerable fleet. I have already stated that I would have preferred to specify certain rights appertaining to the coastal State, rather than apply the principle of absolute sovereignty to the territorial sea. However, as the majority of the Committee desired to retain the principle of sovereignty, I agreed to that course.

The amendment submitted by the United States delegation proposes to consider the air-space above the territorial waters as part of the territory. This amendment thus introduces three conceptions: the subsoil, the territorial waters and the air-space above the latter. Our task here is to determine the legal status of the territorial sea. We cannot, however, be blind to the interconnection between the territorial sea, the subsoil and the air-space. For instance, we are all aware that the utilisation of the air-space may give rise to certain dangers above the territorial waters.

The question of the territorial waters is, however, what chiefly concerns us, and I think we should refrain from taking any final decision on the two other points. My reasons are as follows. As regards the air-space, there already exist Conventions which regulate this matter; moreover, we are not prepared to lay down absolute rules in this field. Finally, I am not sure whether, if we were to affirm the rule of the sovereignty of the State in this connection, we might not be giving ground for misunderstandings.

As, however, we cannot be unmindful of the interconnection which exists between the territorial sea, the subsoil and the air-space above the territorial waters, I propose that we should ask the Drafting Committee to draw up some general rules in regard to the subsoil and the air-space; but I consider that we should refrain from taking any

definitive decision concerning the legal status of those two elements.

The Chairman :

Translation : The discussion on Basis No. 2 has been very full. Opinions are divided. As the United States delegation maintains its amendment, I think that the time has come for the Committee to decide by a vote whether it is desirable to insert a rule regarding the legal status of the air-space and the subsoil.

The Committee decided by 24 votes against 7 to insert such a rule.

M. de Armenteros (Cuba) :

Translation : May I be informed if the United States delegation has accepted my suggestion to insert the word " also " in the text of its amendment, which would then read : " The territory of the coastal State also includes . . . "

Mr. Miller (United States of America) :

Yes.

The Chairman :

Translation : The Committee has decided by 24 votes in favour of this rule. We must therefore accept that decision as a basis for our subsequent work. As the desirability of such a rule is now established, I think the Committee will unanimously agree to refer the question to the Sub-Committee which is to be set up. That Committee will be instructed to draw up a text, using the United States amendment as a basis and taking into consideration the various proposals which have been made — in particular, those of the delegates of Denmark, France and Cuba.

M. Giannini (Italy) :

Translation : : I think it essential that the Sub-Committee should know whether or not we are agreed that the text it is to draw up should be as simple as possible, and should merely serve to link our Convention to the Conventions which already exist in the sphere of air navigation and to those which may hereafter be concluded concerning the exploitation of the subsoil.

M. Meitani (Roumania) :

Translation : The Committee has already expressed its view on a question of principle, based on the United States amendment, and not on the linking together of any Conventions. It seems to me that this question cannot now be raised.

The Chairman :

Translation : I do not think that there is any disagreement. The Committee is no doubt of opinion that the text to be drawn up by the Sub-Committee should be as simple as possible.

12. PROGRAMME OF WORK.

The Chairman :

Translation : To-morrow we will begin the discussion on Chapter IV, including Bases Nos. 19 to 24. This chapter is entitled " Foreign Ships passing through Territorial Waters ". I propose that we should first of all consider these Bases in the full Committee in order to enable the authors of amendments to speak in support of them and to give an opportunity to other delegates to express their views on those amendments. I think that this first stage of our work should be brief, and, if I may express a wish, I hope that it may be concluded to-morrow.

After being thus examined in the Committee, the question will be referred to the Sub-Committee, which will have to consider it, but will not be concerned with questions of form. The Sub-Committee will not be asked to draft the actual texts, but to determine the substance of the rules adopted.

The third stage of our work will be the report of the Sub-Committee to the Committee, and its approval by the latter. Between these two stages of our work, a Drafting Committee will recast the rules adopted by the Sub-Committee and will draft them in the form of articles.

I request the delegations to reflect on this programme and to make any observations they may have to offer at to-morrow's meeting.

The meeting rose at 12.50 p.m.

SIXTH MEETING

Saturday, March 22nd, 1930, at 10 a.m.

Chairman : M. GÖPPERT.

13. DETAILED EXAMINATION OF BASES OF DISCUSSION Nos. 19, 20, 21 AND 25.

The Chairman :

Translation : We now begin the discussion of the chapter entitled " Foreign Ships passing through Territorial Waters ". I propose that this chapter should be divided into two, and that Bases Nos. 19, 20, 21 and 25 should first be discussed.

Several amendments have been proposed by the United States delegation, two by the French delegation, two by the Roumanian delegation and one by the Portuguese delegation. I will first call upon the representatives of the delegations which submitted these amendments, according to the order in which they were sent in.

Mr. Miller (United States of America) :

According to the procedure laid down by the Chairman, we are to discuss Bases Nos. 19, 20, 21 and 25 ; that is to say, the general question of the right of innocent passage. That right is not defined as yet in these Bases. It seems to me desirable to say something as to its meaning.

The right of innocent passage is a right of passage which is not connected with entrance to a port or with departure from a port ; it is a right, in other words, of navigating the territorial waters for the purpose only of passing through them, from a place outside the jurisdiction of the State in question to another place outside that jurisdiction. Understood in that sense, I submit that the value of that right has been considerably exaggerated in the books. There are very large parts of the coast throughout the world where the right of innocent passage is never employed by merchant ships. I can say with certainty that there are large portions of the coast of the United States where merchant ships do not penetrate within the limits of the territorial waters in innocent passage ; they pass on the outside.

While I do not wish to bring up the question of the extent of the limits of the territorial sea, I would point out that, in most cases, the deviation in the course of a ship is very slight if it is required to go outside that limit ; or, let me say, outside the limit of the territorial waters of the United States, which is three miles.

It is with that point in mind that the first amendment proposed by the United States of America has been drafted, and which I will read. We propose the insertion at the beginning of Basis No. 19 of the words :

> " Subject to the rights of the coastal State to the use of the territorial waters or the subsoil for its national purposes."

Our desire is to emphasise what we consider in this connection to be the superior right of the coastal State.

Reference was made here the other day by Dr. Schücking to the question of mines in the subsoil. He spoke, if I remember correctly, of petrol. It might well be necessary to erect a structure which would require ships passing through territorial waters to make a detour round that installation of a coastal State.

I believe it is also quite a common practice for the coastal State to close a portion of the territorial waters for a particular time. While, therefore, there is no desire to limit the ordinary right of innocent passage for merchant ships, an expression should be included in the Basis which would indicate that, in principle, the right of the coastal State, when it is necessary for national purposes to use a portion of the territorial sea either on the surface or the subsoil, is superior to the right of innocent passage.

The delegation of the United States also proposed to suppress the second and third paragraphs of Basis No. 19. Undoubtedly, the second paragraph is, in principle, correct. I submit, however, that it is too strongly stated. As a general rule, the right of innocent passage naturally covers persons and goods ; nevertheless, in Basis No. 23, for example, the question of arrest is mentioned. This right, therefore, is not without its exceptions even in these Bases. Exceptions might be also imagined as to goods. Suppose, for example, that the goods had been stolen. I do not think that the competence of the coastal State to reclaim them in such a case would be doubted. If, therefore, the words " in principle " or " generally " were inserted I should have no objection to the second paragraph of the Basis in question.

Now as to the third paragraph of the Basis, which reads :

> " The right of passage comprises the right of anchoring so far as is necessary for the purposes of navigation."

This may, generally speaking, be correct, but if the provision were qualified so as to

make it clear that it was subject to the regulations laid down by the coastal State, it would be better. The right of anchorage in innocent passage is an exception — a very limited exception. It is only in an urgent case that the right of anchorage exists as a part of innocent passage.

In general, I think it would be said that anchorage would terminate innocent passage and be equivalent to an entrance for all purposes into the jurisdiction of the coastal State ; the right of anchorage should therefore be made subject to all the regulations of the coastal State. For example, the right of anchorage before a harbour might not be permitted ; it might be dangerous to other ships ; the danger to navigation as a whole might well be greater than the danger to the particular ship. Consequently, the regulations of the coastal State regarding such matters must, it seems to me, be superior to the right of anchorage in connection with innocent passage.

In Basis of Discussion No. 20, the right of innocent passage is spoken of in connection with warships. In my view, the right of innocent passage as a matter of right does not extend to warships. It is ordinarily granted that the right of innocent passage is primarily in favour of commerce, and it seems to me that, so far as warships are concerned, the question is wholly one of usage and the comity of nations. A coastal State is, therefore, quite within its competence, at any rate as regards part of its coastal water — its territorial sea, if I may employ one of the two expressions which have been used — if it says that the right of innocent passage for warships does not exist there.

The United States delegation has therefore proposed an amendment which says :

> " A coastal State should ordinarily, as a matter of comity, permit innocent passage through its territorial waters of foreign warships, including submarines navigating on the surface only and not submerged or half-awash."

I must say in this connection that I question somewhat the French translation of the amendment proposed by the United States delegation to Basis No. 20. It seems to me that the English text of this amendment more accurately states our thought.

Similarly, in the second paragraph of Basis No. 20, if the right of innocent passage does not extend to warships, it seems clear that the last words of the second paragraph should be struck out, namely, the words, " without, however, having the right to require a previous authorisation ".

If the question of innocent passage of warships through the territorial sea is purely a matter of comity, the coastal State, if it so desires, clearly has the right to require a previous authorisation. I shall not, therefore, go outside the four Bases of Discussion which were indicated by the Chairman. I submit that the United States amendments should, subject to drafting, be adopted. We have proposed no amendments either to Basis No. 21 or to Basis No. 25.

M. Meitani (Roumania) :

Translation : The question of the presence of warships in the territorial waters of a State is of importance to a very large number of Powers, more especially to those which have not yet established diplomatic relations with their neighbours.

Once it is decided that the territorial waters of a State form part of its territory and that authorisation from the coastal State is necessary before a warship of another State can enter one of its ports, it seems to me that authorisation is equally necessary for a warship to pass through the territorial waters of a foreign Power. In any case, notification of the presence of the warship is absolutely indispensable.

The passage of a foreign warship through the territorial waters of a State, if not notified to it, may constitute a source of danger, especially, as I have already remarked, when the ship flies the flag of a Power with which the State concerned has not established diplomatic relations.

If the breadth of the territorial sea is three, or even six, nautical miles, a warship can pursue its course without passing through territorial waters. It can quite well keep to the high sea, and, if it passes through the territorial waters of a State, some ulterior motive may be suspected. The warship may carry out unfriendly acts, such as taking soundings and charting.

I think, therefore, that we ought to stipulate either that previous authorisation is necessary or that notification must be given, to enable the State concerned to take any precaution it considers advisable. The Bases of Discussion provide that a foreign vessel must respect the local laws and regulations, and for this purpose it is necessary that the State concerned should be aware of the presence of the foreign warship.

Again, I consider that the Committee ought to stipulate that previous authorisation or notification shall be required. I am prepared to accept the United States proposal, but would point out that the word " comity " is a little vague and might give rise to some misunderstanding.

It might, perhaps, be better to use the word " may " and to say :

> " Any State may authorise or prohibit the passage of foreign warships through its territorial waters."

I have proposed two amendments to the Basis of Discussion as at present drafted.

Yesterday, as a result of the Committee's vote, it was finally recognised that States possessed, not sovereignty — a word which it was not considered desirable to use — but the attributes of sovereignty over their territorial waters. This question of sovereignty was

extended to territorial waters, to the air above, and to the subsoil.

I had myself proposed that the first part of Article 19 should be drafted as follows :

" A coastal State is bound to allow foreign merchant ships *and foreign aircraft* a right of innocent passage, etc."

I had included the words " *and foreign aircaft* " and further added " . . . a right of innocent passage through *and over* its territorial waters".

The French delegate, however, pointed out in a proposal that air navigation was regulated by the Paris Convention of 1919, and that it was therefore preferable that reference should be made to the provisions of that Convention as regards all matters concerning aircraft.

Consequently, I will not press my amendment, and if the Committee approves the French proposal, as I presume it will, my amendment can be withdrawn.

I also proposed a second amendment. The third paragraph of Basis of Discussion No. 19 deals with the right of anchoring so far as is necessary for purposes of navigation.

A vessel may be forced to stop and anchor in the territorial waters of a State. The Convention deals with vessels in foreign territorial waters and ports and lays down the rights of the State as regards crimes and other offences committed by various persons on board ; it does not, however, deal with vessels which are obliged to anchor in territorial waters owing to some accidental circumstances or other reason.

In my amendment, I proposed to add at the end of the article the following paragraph :

" In this case (or in the case of prolonged anchoring) the ship is subject to the regime applicable to vessels in foreign ports."

Since submitting this amendment, I have seen the proposals made by the other delegations, and especially that of the Portuguese delegation, which submitted an amendment with the same object.

If the Committee accepts Basis of Discussion No. 19 as drafted, and likewise accepts the amendment proposed by the United States delegation, I shall be satisfied, and merely desire to submit a few observations.

I do not think it necessary to insert the opening words of the United States amendment :

" Subjects to the rights of the coastal State to the use of the territorial waters or the subsoil for its national purposes, etc."

The rights of States as regards territorial waters and the subsoil have already been recognised. We need only say :

" A coastal State is bound to allow foreign ships, other than warships, a right of innocent passage through its territorial waters ; any police or navigation regulations with which such ships may be required to comply must be applied in such a manner as to respect the right of passage and without discrimination."

I am prepared to accept this amendment, which is of a more general character, and would merely ask that the French text at least, should be redrafted. " Discrimination " is not a very suitable expression ; it would be better to say : " . . . dans des conditions de complète égalité, de manière à respecter ce droit de passage."

As regards Article 20, I am prepared to accept the amendment submitted by the United States delegation :

" A coastal State should ordinarily, *as a matter of comity*, etc."

As I have just said, I should, however, prefer the following text :

" A coastal State may ordinarily permit the innocent passage through its territorial waters of warships, etc."

The French delegation submitted an amendment, reading as follows :

" A coastal State is bound to allow foreign ships, other than ships belonging to naval forces, a right of innocent passage through its territorial waters, it being understood that fishing vessels will not actually engage in fishing and that commercial submarines will not be entitled to make use of this right of passage except on the surface."

The general text proposed by the United States delegation appears to me to embody these provisions. If it is established that a State is entitled to regulate navigation, each State may frame police regulations laying down the rights of foreign States in its territorial waters.

Most States under their regulations give their nationals living on the coast the right to carry on the coasting trade and the right of fishing. Fishing rights are usually reserved, in the absence of agreement to the contrary, for the subjects of the State.

This amendment can certainly do no harm. I think, however, that it is covered by the general definition of police laws and navigation regulations.

Mr. Miller (United States of America) :

In order to avoid any confusion of texts, I should like to read the English and French texts of the first paragraph of Basis No. 20 as now proposed by the United States delegation :

" A coastal State will ordinarily permit innocent passage through its territorial

waters of foreign warships, including submarines navigating on the surface only and not submerged or half-awash."

" En général, l'Etat riverain autorisera dans ses eaux territoriales le passage inoffensif de navires de guerre étrangers, y compris les sous-marins naviguant uniquement en surface et non en plongée ou en demi-plongée."

M. Gidel (France) :

Translation : The object of our amendment to Basis No. 19 is to prevent any ambiguity in regard to the right of passage through territorial waters of certain foreign vessels which are not, strictly speaking, merchant ships, such as vessels used for certain public services or pleasure craft. We accordingly propose to replace the words " merchant ships " by the words " ships other than ships belonging to naval forces ". Similar amendments have also been submitted by other delegations. We have used the term " other than ships belonging to naval forces " and not " other than warships " — although certain of our colleagues may find this somewhat lengthy — because the term " warships " might be interpreted to mean vessels carrying offensive armaments, whereas we also wish to include service ships used by navies, such as tank vessels.

The second amendment consists of the addition to Basis No. 19 of the following words : " it being understood that fishing vessels will not actually engage in fishing ". That is because we do not wish the right of innocent passage to be used as a means of evading any prohibition in regard to the right of fishing in territorial waters. Our object is merely to make the point quite clear.

The French delegation likewise proposes to add to Basis No. 19 the words : " and that commercial submarines will not be entitled to make use of this right of passage except on the surface ". You will have noticed that submarines are referred to only in Basis No. 20, which deals with warships. In view of the fact that the text which we are to draw up is not intended to be revised every year, but will probably remain in force for a certain number of years, it might perhaps be advisable at present to provide for the possibility — by no means chimerical — of submarines being used for commercial purposes. That is the object of the formal changes proposed in Basis No. 19.

The French delegation also suggests a purely formal change in the second sentence of Basis No. 21, which begins : " Any case of infringement . . . " Instead of this, we should prefer : " Any failure to observe . . . "; the word " infringement " always tends to call up the vision of a policeman or park-ranger who takes a notebook out of his pocket and draws up a report. The substance of the idea seems to me to be accurately, and possibly more adequately, expressed by the words " failure to observe ".

Finally, the French delegation submitted an amendment to Basis No. 25. In this case, again, the amendment does not appreciably modify the substance of the Basis of Discussion, but makes it, I think, more explicit :

" No charge may be levied upon foreign ships by reason of their mere passage through territorial waters. Charges may be levied upon a foreign ship passing through territorial waters only as payment for services rendered to the ship itself. Such charges shall be levied without discrimination."

This does not involve any change in the Basis of Discussion ; it is merely a question of better drafting.

M. de Magalhães (Portugal) :

Translation : The Portuguese delegation having proposed certain amendments to Basis of Discussion No. 19, I should like to explain briefly the object of these proposals. The first is to replace the expression " foreign merchant ships " by " foreign ships other than warships".

Dr. Schücking's proposal, like other suggestions, dealt first with foreign vessels and then with warships. Basis of Discussion No. 19, and also Bases Nos. 22, 23 and 24, deal with merchant ships, while Bases Nos. 20 and 21 refer to warships. In addition to warships and merchant ships, there are also pleasure craft and vessels used for public services and for other purposes. These cannot be included in the term " merchant ships " ; the Basis ought, however, to include all vessels other than warships. For this reason, the term " foreign ships other than warships " should be used. The same amendment has, moreover, been submitted by the United States and French delegations.

The second amendment consists of an addition relating to the status of foreign vessels passing through territorial waters. Basis No. 19 states : " Any police or navigation regulations with which such ships may be required to comply must be applied . . . " I think we are all agreed that foreign vessels passing through the territorial waters of a State should comply with all the regulations of that State, whatever they may be.

Nevertheless, I am in favour of the French proposal that special reference should be made to fishing regulations. In order to define the legal regime to which vessels passing through territorial waters are subject, I propose to add that vessels contravening these regulations shall be amenable to the jurisdiction of the coastal State. This provision is embodied in the latest draft of the Institut de droit international.

The Portuguese delegation proposes that the third paragraph of Basis No. 19 should be amended. The right of anchoring is an exceptional right ; that is to say, it is granted only in exceptional cases. If it is desired to establish

an exceptional right, this must not be done by means of a provision which appears to make it a general rule. We think, therefore, that it would be better to say : " The right of passage comprises the right of anchoring only in so far as is strictly necessary for purposes of navigation ".

Once the right of anchoring, even in exceptional cases, is allowed, I consider it desirable to define the legal regime to which a foreign vessel lying in the territorial waters of a coastal State is to be subject. In this connection, a distinction should be made between a stay necessary for purposes of navigation and a stay for a longer period than is necessary. In the former case, the vessel should be subject to the samc judicial and legislative regime as if it were merely passing through ; in the latter case, however, it would be necessary to lay down other conditions, and I accordingly propose the following text :

> " Should the vessel continue to anchor in the territorial waters of a State for a period longer than that which is strictly necessary, the coastal State may claim judicial and legislative jurisdiction as if the vessel was within a port of that State."

This clause appears to me to be indispensable and is also to be found in the latest draft of the Institut de droit international.

I would draw the Committee's attention to the words : " dans des conditions d'entière égalité " at the end of the first paragraph of the French text of Basis No. 19. In the United States amendment, the words " without discrimination " are used. It would seem desirable to examine these expressions and bring the two texts into line.

I also think that, for the reasons already stated by the French delegate, special reference should be made in this Basis to commercial submarines.

If the Committee, or rather the Conference, considers that the Convention will not be applicable in time of war, I think we ought to say so in the text. In any case, I desire, on behalf of my Government, to state, in connection with the Bases under discussion, that it reserves the right in case of war to take any measures neccssary to guarantee its territorial integrity and its essential needs.

I also consider that we should define, at all events for the purposes of this Convention, the exact scope of the term " warship ".

I would propose that, for the purposes of the present Convention, the term " warship " should comprise all vessels temporarily or permanently incorporated in the forces of any State.

I have nothing further to say for the moment, but reserve the right to submit other proposals and observations with regard to Bases Nos. 20 to 24, and to defend my proposals should they meet with any opposition.

Sir Maurice Gwyer (Great Britain) :

The British delegation has certain amendments to propose, and regrets very much that they have not yet been deposited with the Bureau. With your permission, Mr. Chairman, I will endcavour to indicate certain views which my delegation has formed on the Bases which the Committee is now discussing.

In the first place, Bases Nos. 19 to 21, if I may say so with the utmost respect for the draughtsmen of those Bases, seem to me to be sadly lacking in precision, in a matter in connection with which precision is above all things necessary.

Basis No. 19 begins with the phrase : " A coastal State is bound to allow foreign merchant ships a right of innocent passage ". I do not find, however, in any of these Bases, a definition of what the right of innocent passage is, and it seems to me that this chapter, which deals with foreign ships passing through territorial waters, must begin with a definition, as precise as we can make it, of what the right of innocent passage really is. For that purpose, I propose to put in an amendment for a new Basis entitled " Definition of the Right of Innocent Passage ". I would suggest that that new Basis should run more or less on the following lines :

> " *Definition of the Right of Innocent Passage.*
>
> " 1. The right of innocent passage is the right of a foreign ship not proceeding either to or from a port of a coastal State to enter and navigate the territorial waters of that State for the purpose only of passing through them.
>
> " 2. A passage is not innocent if the ship makes use of the territorial waters of the coastal State for any purpose prejudicial to the safcty, good order or revenues of the coastal State.
>
> " 3. The right of innocent passage includes the right to anchor and the like, so far as the same may be incidental to the ordinary course of navigation."

I submit to the Committee that a definition of that kind must be includcd if misapprehensions and difficulties arc to be avoided in the future, I submit, further, that a definition framed substantially on the lines of the text I have just read represents existing law and practice.

Again, having once recognised the right of foreign ships to navigate the territorial waters of the coastal State in the exercise of the right of innocent passage as so defined, it is, I think, also necessary, in order to avoid difficulties in the future, to define, again as precisely as circumstances permit, the rights of the coastal State over or in respect of the ships which are exercising that right of innocent passage. This is necessary because it is not to be assumed for one moment that a ship which is exercising the right of innocent passage is outside the sovereignty or jurisdiction of the coastal State for all purposes. No coastal State could admit such a proposal, and no maritime States whose ships are navigating the waters of a coastal State would endeavour to assert such a proposal.

My own country is doubly interested in this matter. Its ships, in the course of their ordinary trade, necessarily navigate the waters of all the countries of the world, and they are therefore interested in securing a precise definition of the right of innocent passage. But the English Channel and English territorial waters in the English Channel are the resort of the trading ships of all the other nations of the world, which pass through them from the Atlantic to the ports of Northern Europe. My country is, therefore, interested in the rights of the coastal States as well as in the rights of the States which enter the coastal State's territorial waters. I therefore submit that it is necessary to define with precision, so far as we can, what the rights of the coastal State may be, and I would propose that Bases 19, 20 and 21 should be replaced by a new series of provisions which can be expressed concisely and in very few words on the following lines.

I would begin by saying, as the original Basis says :

> " A coastal State is bound to allow foreign ships to pass through its territorial waters in the exercise of the right of innocent passage."

That is a statement of the obligation of the coastal State. I would then go on to say something on the following lines :

> " A coastal State may require foreign ships exercising the right of innocent passage to comply with such regulations as may be prescribed by the local law :
>
> " *(a)* For the safety of traffic and of traffic channels ;
>
> " *(b)* For the protection of the waters of the coastal State from oil and ships' refuse ;
>
> " *(c)* For the protection of any exclusive fishing rights which the coastal State possesses."

Then, lest by defining three things as precisely as has been done, we might by inadvertence overlook some other matter which should also have been dealt with, I would prefer to add the following :

> " *(d)* For such other matters as, in accordance with international usage and practice, a coastal State may regulate in the case of foreign ships exercising the right of innocent passage."

Then I would go on to say that a coastal State " may not enforce any regulations in such a way as to discriminate between its own ships and foreign ships other than fishing craft or between the ships of one State and those of another. Save as aforesaid, a foreign ship shall be entitled to exercise the right of innocent passage without let or hindrance."

Then comes the question of warships. In the first place, I wish to draw attention to a difference between the English and French texts of Bases Nos. 19 and 20, in which this matter is dealt with. The French text of Basis No. 19 reads as follows : " L'Etat riverain doit reconnaître aux navires de commerce " and in Basis No. 20 : " L'Etat riverain doit reconnaître aux bâtiments de guerre ". If you turn to the English text you will see in Basis No. 19 the words are : "A coastal State is bound to allow foreign merchant ships a right of innocent passage ", and in Basis No. 20 : " A coastal State should recognise the right of innocent passage . . . of foreign warships ".

To an Englishman, that difference of language conveys a profound difference in sense, and I should myself read the English text of Basis No. 19 as implying a legal obligation to allow the passage of merchant ships, but Basis No. 20 as implying a moral right, a right of courtesy, a right of comity — whatever you wish to call it — in the case of warships. In these circumstances, I am in some doubt as to what the draughtsmen of the two Bases really meant, and it is not clear to me whether, in fact, they intended to put the right of foreign warships on a higher level than that approved by the delegate of the United States. In these circumstances, the subject being of necessity a delicate one, the Committee might perhaps accept, in principle, the plan suggested by the delegate of the United States.

I propose to omit the whole of Basis No. 20, and should be content with one single paragraph of a very few words. It might perhaps be on the following lines :

> " The entry into and the passage through territorial waters of a foreign warship shall continue to be regulated by the existing international usage and practice."

In other words, so far as warships are concerned, I would leave matters exactly as they are at present without attempting to define more precisely what the respective rights and obligations are. I am the more anxious to do that because, from enquiries which I have made, I understand that substantially all the maritime nations of the world have adopted not necessarily the same but substantially the same rules in this respect, and that the rules work well in practice. In those circumstances, it seems to me that the wise course is to let well alone.

I desire, therefore, to support the proposal of the delegate of the United States in so far as he suggests that this should be treated as a matter of international comity and courtesy, though without necessarily adopting every one of the arguments used by him. I think, in fact, that there is no real difference between the wording which he suggested and my own, though I have the affection of a parent for my own draft.

The British delegation has certain other amendments to suggest in regard to the other Bases in Chapter 4, but I have no wish to detain the Committee by going into them in detail. I propose to submit certain amendments to Bases of Discussion Nos. 22, 23, 24 and 27 mainly for the purpose, as I hope, of making clear the meaning of the existing

text. It seems to me a little obscure in parts and in one or two places not to produce accurately what I feel convinced the draughtsmen of the Bases themselves intended. For the moment, however, I content myself with speaking of Bases Nos. 19 to 21, because those are the important Bases which we are discussing this morning.

To sum up very shortly what I have said: I think we must first have a definition of what innocent passage means; secondly, we must have as precise a definition as we can get of the rights which the coastal State is entitled to exercise over passing ships; thirdly, I propose that we deal with the question of warships by leaving matters in the happy position in which they are at present.

M. de Armenteros (Cuba):

Translation: I have listened with the greatest interest to the British delegation's statement, and am glad that reference has been made to the definition of innocent passage. A definition of this right, which may be regarded as properly established, was given by the Barcelona Congress. It has also been very clearly defined by the United States delegation, while a third very accurate definition has been formulated by the British delegation.

I should like to bring to your notice a fourth definition drawn up by the American Institute of International Law. The Executive Council of the Institute met at Havana in March in order to prepare drafts for the present Codification Conference. Mr. Brown Scott, the President of the Institute, himself prepared the draft on nationality; the task of preparing the draft on the responsibility of States was entrusted to the Peruvian Minister in Brazil, and the third relating to territorial waters to M. Antonio Sanchez de Bustamante. We all know the qualifications of M. de Bustamante, who is a judge at the Permanent Court of International Justice, Professor of Public and Private International Law at the University of Havana, President of the International Academy of Comparative Law, etc. These three drafts were sent to the Conference, and I would request our Chairman to ask the Secretariat to obtain M. de Bustamante's draft, not in order that it may serve us as a Basis of Discussion, but because it may be of great assistance to us as a reference document.

We have before us a Basis of Discussion drawn up by Dr. Schücking. According to M. de Bustamante:

> "By inoffensive passage is meant that which causes no injury to any of the rights that the coastal State may have exercised or that it exercises over the said zone."

That definition is accurate, complete and prudent. If we wish to have another American opinion on innocent passage, we can apply to one of our number in this room, M. Crucharo, of the University of Santiago, who can speak with the highest authority and give us a definition on the subject.

M. Sitensky (Czechoslovakia):

Translation: The United States delegation has proposed that the following words should be inserted in Basis of Discussion No. 19: "Subject to the rights of the coastal State to the use of the territorial waters for its national purposes". It appears to me that this reservation goes a great deal too far; it would allow the coastal State to restrict the freedom of navigation in its territorial waters to such an extent that no freedom would be left, or, at all events, it would accord to the coastal State much more extensive powers over its territorial waters than those which it possesses in regard to navigation on international waterways.

In the acts or statutes governing the regime of the various international waterways, the fundamental principles regulating conditions of navigation are in every case freedom of navigation and freedom of transit. The coastal State is not allowed to restrict this freedom except for the purposes and in the cases expressly mentioned in those acts or statutes.

I do not imagine that the Conference desires to establish a less favourable regime for maritime navigation in territorial waters than that which has been accepted for navigation on international waterways. For that reason, I am unable to accept the United States proposal, either as regards the amendment to the first paragraph or the deletion of the two following paragraphs.

For the same reason, I cannot accept the Portuguese delegation's proposal, because I think it restricts the freedom of maritime navigation to an extent which is not justified either by the needs or legitimate interests of coastal States.

What danger to the coastal State can possibly arise if a vessel other than a warship stays for a few hours in its waters? Of what practical importance is it to the coastal State that this vessel should pass through territorial waters as quickly as possible? I really do not see why a vessel which remains for some hours in that zone should be subjected to the same judicial and legislative treatment as if it were in a port.

The United States delegation based its proposal, *inter alia*, on the fact that there is no necessity for foreign vessels to enter certain territorial waters, which they can easily avoid by making a slight detour. I should like to point out that similar cases arise in regard to international rivers. There are sometimes two parallel branches, both of which are equally navigable, and in such cases it is provided that the principle of the freedom of navigation and transit shall apply to both. For these reasons, I cannot accept either the United States or the Portuguese proposal in

regard to Basis of Discussion No. 19. On the other hand, I entirely support the French delegation's proposal and also that of the British delegation concerning Basis No. 19.

M. Surie (Netherlands) :

Translation : As regards Basis No. 19, the Netherlands delegation provisionally accepts the original text. Since, however, the Committee has before it certain very important amendments, the Netherlands delegation would prefer to wait until the Sub-Committee has been able to draft a text before expressing its final opinion.

With reference to Basis No. 20, I would point out, as has already been done by the British delegate, that the French and English texts do not absolutely coincide ; the former reading : " L'Etat riverain doit reconnaître le droit de passage inoffensif . . . " and the latter : " A coastal State should recognise the right of innocent passage . . . " The Netherlands delegation, for its part, is prepared to accept the English text and would like the French text to be brought into line with it.

The Netherlands delegation also proposes that the words " in normal times " should be added, because it is obvious that the coastal State should retain the right to restrict or prohibit the entrance of foreign warships into its territorial waters in exceptional circumstances.

The right of passage of warships through straits uniting two free seas should remain unchanged. The Netherlands delegation, however, proposes to deal with the question of straits in a separate article, because there is a special Convention governing the passage of vessels through certain channels and straits. I do not desire to make any definite proposal on this matter, since it will be for the Drafting Committee to frame a text as the outcome of our discussions.

Lastly, the Netherlands delegation desires to associate itself with the proposal that a definite interpretation of what is meant by innocent passage should be given.

M. Goicoechea (Spain) :

Translation : I will not touch on any questions of mere drafting, but will confine myself to the fundamental principles under discussion.

We are dealing with two entirely different questions : the treatment of merchant ships and the treatment of warships.

As regards merchant ships, I think it necessary to affirm three fundamental principles. We have laid down the principle relating to the right of sovereignty. We should also affirm here that there is a real right of passage through territorial waters for the vessels of all States. I contend that this is an actual right, and not a moral obligation or a question of comity. In order to appreciate how far international law has moved in this matter, we need only compare the text of the draft Regulations drawn up by the Institut de droit international in 1894 with the draft drawn up by the Institut in 1928. In the former, the Institut accepted the possibility of a State preventing the passage of foreign ships ; that provision, however, does not appear in the 1928 text.

I shall, therefore, make so bold as to propose the omission of the word " innocent ". Four or five different words have been used to express the same idea — " inoffensive ", " innocent ", " pacific " and " free ". I am in favour of the solution proposed by the International Law Association which, in its 1927 draft, suggested that the term " passage " or " free passage " should be used.

The question is whether the right of sovereignty is compatible with the right of passage without any qualification. For my own part, I reply in the affirmative. Modern law has formulated the principle that there is no absolute right of sovereignty. That being so, there is no contradiction between the right of sovereignty and the right of passage. What are the limitations composed on the right of passage? In the first place, we cannot affirm that there is a right of passage without extending it to all countries. We do not want our Convention to be open to the well-deserved criticism that has been passed on the Aerial Navigation Convention, which confers the right of air navigation on the contracting parties alone. I think we should declare that the right of passage exists for all vessels.

Basis of Discussion No. 19 states that " any police or navigation regulations with which such ships may be required to comply must be applied in such a manner as to respect the right of passage and without discrimination ". Let us suppose that a large number of coastal States invade territorial waters, build bridges, roads and causeways over them, and enact legislation on the subject. These measures would impose restrictions different from those resulting from police and navigation regulations.

Moreover, the words " police and navigation regulations " go too far in some respects. We must not forget the existence of private international law, which, in certain cases, limits the application of local laws. For instance, although a vessel is subject to the navigation regulations concerning collisions, in the case of a collision between two vessels flying the same flag, both are subject, if the collision was accidental, to the law of the State whose flag is flown. The obligations of the master and officers are regulated in the same manner ; that is to say, the law of the State whose flag is flown is applicable. This also applies to bottomry bonds, the sale of goods and vessels in the port, etc. Consequently, if we respect the principle universally accepted by private international law, we cannot affirm

that all police and navigation regulations are applicable to merchant ships crossing territorial waters.

As regards the third principle, the United States and French delegations have submitted important observations. I do not think it possible to accept the principle of complete equality in regard to all merchant ships, as, in addition to the rules laid down in the Convention which we are engaged in framing and in other conventions, international treaties have to be taken into account. These provide for different treatment for the merchant ships of different countries. This likewise applies to the protection of fisheries, the regulation of industries, etc.

I should like to add a word or two regarding the treatment of warships. I have said that, in my view, there is a right of passage for all merchant ships, but I very much question whether such a right exists in regard to warships. Consequently, I cannot accept the first paragraph of Basis No. 20, and think it would be better to say that the coastal State may authorise the innocent passage through its territorial waters of foreign warships. In this case, the use of the word " innocent " is justified.

I also agree with the Roumanian delegate that the words " without, however, having the right to require a previous authorisation " should be omitted. Each State must choose between the systems of prevention and punishment as regards the treatment of foreign warships. I accordingly agree with the United States, French and British delegations that the effects of Basis of Discussion No. 20 should be restricted.

The continuation of the discussion was adjourned to the next meeting.

The meeting rose at 12.30 p.m.

SEVENTH MEETING

Monday, March 24th, 1930, at 10 a.m.

Chairman : M. GÖPPERT

14. CONTINUATION OF THE DETAILED EXAMINATION OF BASES OF DISCUSSION Nos. 19, 20, 21 AND 25.

The Chairman :

Translation : In order to simplify the question, I propose that warships should be left out of account for the moment, and that we should confine ourselves to merchant ships.

M. Salvioli (Italy) :

Translation : The Italian delegation has carefully considered the amendments put forward by the various delegations. We are in agreement with several of them, but I should like to submit a few observations.

The United States delegate proposes that paragraphs 2 and 3 of Basis of Discussion No. 19 should be omitted.

If the legal definition of the passage of a vessel covers the passage of persons and goods and also anchoring for the purposes indicated in the Basis, there is no harm in saying so explicitly. If, however, the legal concept does not include the right of innocent passage for persons and goods, this right must be inserted, and it is even necessary to define the rules governing the right of passage for persons, etc.

The Italian delegation is in favour of maintaining the Basis of Discussion as at present drafted.

It has been pointed out that the general principle of the right of passage for persons and goods might give rise to certain difficulties, more especially from the point of view of the safety of the coastal State. Mention has been made of the presence of persons on board the vessels in question who might constitute a source of danger to the coastal State. In that case, however, the passage is no longer innocent.

When we speak of innocent passage, we think of the vessel as a whole ; we do not think merely of the hull of the vessel.

We must not forget that the draft Convention submitted to us provides for measures of security being taken by the coastal State. Thus, Basis of Discussion No. 23 refers to " a person whose arrest is sought by the judicial authorities of the coastal State " and who " may be arrested on board a foreign merchant ship within the territorial waters of the State ".

Consequently, all the necessary stipulations in regard to safety or the needs of the coastal State are already embodied in the draft Convention. There only remains to be considered the possibility of a seizure of goods on board a vessel passing through territorial waters. In my opinion, this question could easily be regulated in this same Basis by a simple addition.

As regards anchoring, this point has been determined with sufficient clearness, and it is

unnecessary to modify the defintion in any way. The text before us states that the " right of passage comprises the right of anchoring *so far as is necessary for purposes of navigation* ". This excludes anchoring for purposes other than navigation, such as for the purpose of taking on board or landing persons and goods.

Neither am I in favour of the amendment submitted by the French delegate, M. Gidel, who proposes that fishing vessels crossing territorial waters may not actually engage in fishing. In my opinion, as we are dealing with passage through territorial waters, it is not conceivable that fishing vessels exercising the right of passage should have the right to engage in fishing.

It would be unwise to include a definition or restriction of this kind, in view of the possibility of vessels engaging in other activities. These stipulations should therefore be omitted.

As regards the power of the coastal State to prescribe regulations, is it possible for such States to agree to these regulations being enumerated in the manner proposed? It might be dangerous to give an exhaustive list owing to the possibility of omissions ; while, if examples only are given, I do not see why we could not adhere to the formula already adopted in the Basis of Discussion, which allows a coastal State the right to issue police and navigation regulations, etc. Basis No. 19 provides for two things — the existence of these regulations and their application without dsicrimination.

Reference to their application without discrimination presupposes the existence of these regulations. This formula might possibly be amplified so as to cover all matters which it is considered desirable to include, without, however, mentioning them specifically.

I fully agree with the views expressed by the British delegate with rcgard to the content of these regulations. The British delegate said that the regulations must be in conformity with international law. That consideration should be borne in mind. I am not, however, in favour of expressions such as " in principle ", " in general ", " as a general rule ", which have been employed by other delegates, bccause these expressions practically destroy the legal value of any provision to which they are attached.

Dr. Schücking (Germany) :

Translation : I fully agree.

M. Salvioli (Italy) :

Translation : As the Chairman has asked us not to deal with warships for the moment, I have no other observations to make. In general, I think that Basis of Discussion No. 19 should be maintained in its present form, and that we should, at the same time, take account of the observations submitted by the British delegate with regard to regulations. That, however, is a question which can best be dealt with by the Drafting Committee.

M. de Ruelle (Belgium) :

Translation : I should like to say a few words in regard to the passage of merchant ships through territorial waters. At a previous meeting I ventured to point out that, when we draft our texts, we must be careful not to embody therein anything that might be inconsistent with the Statute on the Regime of Navigable Waterways of International Concern. Territorial waters sometimes provide access to international navigable waterways, and in my opinion the regime applicable to the belt of territorial waters which has to be crossed cannot be less favourable than that applicable to the river itself ; otherwise, the regime of frecdom laid down in respect of the river would be a dead letter, and the State to which the belt of territorial water belonged would be able to rcnder that freedom entirely illusory.

I would also draw your attention to two points on which we must be careful to see that the texts we draw up do not conflict with existing Conventions. I refer, in the first place, to the general question of navigation in transit through territorial waters — in other words, the passage of merchant ships through such waters. On that point, we propose to embody in the Convention a provision regarding the right of innoccnt passage for merchant ships. This idea is already expressed in an existing Convention on freedom of transit, that signed at Barcelona on April 20th, 1921. Article 2 reads as follows :

> " In order to ensure the application of the provisions of this article, contracting States will allow transit in accordance with the customary conditions and reserves across their territorial water."

This wording, of course, is not very complete. The point at issue is to define the customary conditions and reservations subject to which merchant ships will be allowed to cross territorial waters. We must not set up against this indefinite formula a formula which is even more indefinite, nor must we allow any inconsistency betwccn the two texts ; more particularly, since the Convention to which I refer contains a clause whereby States undertake not to conclude among themselves in the future any Conventions more restrictive in character than that of Barcelona. I therefore venture to draw the Drafting Committee's attention to this point.

In the samc connection, I would bring to the Committee's notice the question of the passage of merchant ships not simply in transit, but making for a port. In connection with this point, too, we must remember that there is a Convention on the regime of maritime ports. That Convention establishes thc right of access to maritime ports under conditions of complete equality. I think it is our intention here to establish the same right of passage under conditions of complete equality. The Statute on the Regime of Maritime Ports seems to me fairly definite

— perhaps more definite than the text we have before us. It reads as follows :

" Subject to the principle of reciprocity and to the reservation set out in the first paragraph of Article 8, every contracting State undertakes to grant the vessels of every other contracting State equality of treatment with its own vessels, or those of any other State whatsoever, in the maritime ports situated under its sovereignty or authority, as regards freedom of access to the port, the use of the port, and the full enjoyment of the benefits as regards navigation and commercial operations which it affords to the vessels, their cargoes and passengers."

The text we adopt must not be less liberal in this respect than that to which I have just drawn your attention. I am not proposing any particular wording. I merely ask that the Drafting Committee which is to be set up should examine these two points.

M. Sjöborg (Sweden) :

Translation : The Basis of Discussion with which we are at present dealing is regarded by the Swedish delegation as of the highest importance, since it establishes the right of innocent passage, which is as old as the conception of the territorial sea itself. The principle of the freedom of communications and transit was recognised and expressly mentioned in the Covenant of the League of Nations, and it was subsequently expanded in the Barcelona and Geneva Conventions. We must not go back along the road we have traversed. This principle must not be impaired ; it must be strengthened and developed.

The Swedish delegation has, therefore, considered carefully the British delegation's proposal, which seems to make good an omission in the Bases of Discussion. Whereas the Bases, after laying down the principle of sovereignty, proclaim the right of innocent passage without explaining the meaning or scope of these words, the British amendment defines this expression and supplies rules to elucidate both the word " passage " and the qualifying word " innocent ".

I consider that such a definition is desirable. After rendering unto Cæsar that which is Cæsar's, we are now rendering unto God that which is God's. The Swedish delegation regards this precaution as even necessary. It was with some reluctance, and I might even say a certain unwillingness, that we voted for retaining the word " sovereignty ", a term which we have nearly all stated and recognised to be somewhat obscure, and which, on that account, might give rise to misunderstanding. The Belgian and Polish delegations, in particular, perceived the danger of retaining the word. We have, nevertheless, kept the word " sovereignty ", but merely because we could not find any other term representing the body of rights and duties which a coastal State possesses, and is bound to possess, over its territorial waters. But if the word " sovereignty " had to be retained, we had at the same time to supply an explanation of the expression " innocent passage ".

I believe that the British delegation's definition is, broadly speaking, satisfactory and sound, and that it can be adopted. However, like the Italian delegation, I am in doubt on certain points. First of all, I believe it would be better to keep paragraph 2 of Basis of Discussion No. 19, which states that " the right of innocent passage covers persons and goods ". I am not sure that this definition includes everything ; if not, it should be extended. That is a matter for the Drafting, Committee. In any case, I believe that some such wording should appear in our definition.

The Italian delegation, moreover, pointed out that the third paragraph of the same Basis : " The right of passage comprises the right of anchoring so far as is necessary for purposes of navigation ", is better than the corresponding provisions in the British amendment. On this point also I agree with the Italian delegation.

The British amendment, after defining " innocent passage ", deals with the restrictions which should be imposed on such passage in the interest of the coastal State. On this point also I could accept the amendment, provided that account is taken of what the Belgian delegation has just said, namely, that, in regard to matters already settled by the Barcelona and Geneva Conventions, we must not show ourselves less liberal than the framers of those Conventions ; above all, we must not run counter to those Conventions.

I also venture to remind you that we have an amendment proposed by the United States delegation beginning with the words :

" Subject to the rights of the coastal State to the use of the territorial waters or of the subsoil for its national purposes, a coastal State is bound to allow foreign ships, other than warships, a right of innocent passage through its territorial waters."

This amendment aims, no doubt, at the same object as the British amendment. As regards its form, however, I prefer the British proposal. My reason for doing so is that I think that the right of the coastal State is affirmed in too general terms in the United States proposal, and I believe that on this ground it is unnecessary. At the beginning of the Convention we laid down the principle of the coastal State's sovereignty. The United States amendment adds nothing to this principle. What is required is to explain and define the restrictions which may be imposed on the principle of innocent passage in the interest of the coastal State. This is done in the British amendment, but not in the United States amendment. The former, indeed, enumerates these restrictions.

In order to allay the apprehensions of what I may perhaps call the over-zealous supporters of the rights of the coastal State, I would draw their attention to the fact that the British amendment, after declaring that the coastal State may prescribe regulations in its interest on particular matters in regard to innocent passage, provides that the regulations of the coastal State may also deal with such other matters as, in accordance with international usage and practice, a coastal State may regulate in the case of foreign ships exercising the right of innoncent passage.

That text obviously means that if, either now or in the future, it is found necessary to regulate innocent passage in regard to matters other than those already mentioned in *(a)*, *(b)* and *(c)*, a coastal State is fully entitled to do so, provided always that such regulation is not at variance with international law. I am not sure that I correctly understand the Italian delegation's point of view on this matter, but I take it that the Italian delegation thought the enumeration made in this case was exhaustive. As I see the matter, the great merit of the amendment is that it is not exhaustive, as I have just shown.

If I have understood the Chairman aright we have not for the moment to touch on the question of warships. I shall obey these instructions, but I should like to state on this point that I agree with the British proposal.

If the French delegation will allow me, I shall say a word on the amendments submitted by it, although the French delegation has not yet made any declaration in regard to them.

The French delegation in the first place, proposes to replace the word " merchant ships " by " vessels other than vessels belonging to naval forces ". The Swedish delegation accepts this amendment.

The French delegation further proposes that fishing boats, when using the right of innocent passage, may not engage in fishing. I think we are all agreed on the substance of this amendment ; but, in my view, the object of the French delegation's proposal is covered by point *(c)* in paragraph 2 of the British amendment, which lays down that a coastal State may prescribe regulations for the protection of any exclusive rights of fishing possessed by the coastal State. If the French delegation accepts the British proposal, it will no doubt withdraw its own amendment.

The French delegation also proposes that commercial submarines should not use this right of passage except on the surface. Point *(a)* in the British amendment stipulates that a coastal State may impose regulations for the safety of traffic and of traffic channels. Here, also, I think that the point aimed at in the French delegation's amendment is covered by the stipulation I have just quoted from the British amendment.

The French delegation finally proposes, in regard to charges, that the word " specific " should be omitted from Basis No. 25. The provision in question in Basis No. 25 reads as follows :

> " Charges may be levied upon a foreign ship passing through territorial waters only as payment for specific services rendered to the ship itself."

The Swedish delegation is opposed to the deletion of the word " specific ". Our reason is that, if the French wording were employed, it would obviously be permissible to levy charges for general services rendered to navigation, as, for example, lighthouse duties and buoyage duties. We consider that the right to impose such charges might give rise to abuse. We wish to recognise only charges for services specially rendered to vessels — for example, pilotage duties.

Before concluding, I should like to touch on another aspect of the principle of innocent passage. As I have already stated, I am entirely opposed to this principle being impaired in any way whatsoever in our Convention. It will, however, only be applied in territorial waters, that is to say, in waters which must, strictly speaking, be regarded as territorial. We have not yet come to this question.

With your permission, I should like at present to say that the Swedish delegation is not in complete agreement with the Bases of Discussion on this matter. Indeed, where there are islands along a coast, the Bases of Discussion lay down the principle that, not only a certain area of water beyond these islands must be regarded as territorial waters, but also waters between the islands and the coast. The Swedish delegation cannot agree that waters between islands and the coast should be regarded as territorial waters. It thinks that they are inland waters, and it is in a position to support this view by cogent arguments which it intends to bring forward at the proper time.

I am anxious, however, to say that if, in exceptional cases, there are waters situated between a coast and islands which ordinarily serve for navigation between countries other than the coastal State, the principle of innocent passage should be admitted. Accordingly, the Swedish delegation ventures to submit the following amendment, which should be introduced after paragraph 3 of Basis No. 19 :

> " The right of passage also applies to inland waters between the coast and islands situated off the coast in so far as these waters are ordinarily used for navigation between countries other than the coastal State."

M. Raestad (Norway) :

Translation : On behalf of the Norwegian delegation, I accept the governing principle

of the British amendment, namely, the necessity of defining, as far as possible, the rules which we desire to adopt in regard to innocent passage. If we merely repeat general formulas, this is bound to give rise to doubt and conflicting doctrine, and no useful purpose will be achieved. The League Assembly of 1927 stated that codification should not consist solely in the registration of existing rules but should also aim at adapting them, as far as possible, to contemporary conditions of international life. This, then, is our task, and it is a difficult one, but it is also full of promise.

The United States representative said recently that too much importance was possibly being attached to the right of innocent passage. I am not quite sure about this. It depends on the definition of the right of innocent passage. It also depends on navigation conditions, which may differ in different parts of the globe. If, however, we consider that the right of innocent passage is not of great importance, neither is it important for the coastal State to seek to hinder innocent passage. We must not forget that it is practically impossible to apply regulations to vessels passing through territorial waters, which represent millions and millions of miles.

In regulating the question of territorial waters in so far as concerns the innocent passage of merchant ships, we must not prescribe rules which the coastal State will never be able to apply or rights which it will never be able to exercise. As the Swedish delegate truly remarked, the right of innocent passage is as old as international law itself, and is being exercised daily without giving rise to any difficulties. There is no international principle or body of rules which causes so little international friction.

What, then, is the right of innocent passage? Various opinions have been expressed on this point. Some state that this right is subject to a higher right of regulation on the part of the coastal State, while others consider it an independent right which exists to the full extent authorised by international law and which cannot be restricted by the coastal State by means of any regulations whatsoever.

In my opinion, these are superficial differencies. I will not mention the dangerous word " sovereignty " for fear of provoking what the parliamentary reports would term " protests from various quarters ". I would merely state that the tendency to emphasise either the rights of the coastal State of the rights of the vessels depends less on our concept of the right of innocent passage than on the angle from which we look at the question.

Those who emphasise — unduly, in my view — the rights of the coastal State have every excuse, because the teaching on the subject of territorial waters does not make a sufficiently clear distinction between the rights exercised by the coastal State in its territorial waters by reason of its rights over those waters, and the rights which it exercises as the owner of a port at which the vessel intends subsequently to call. As a rule, we read in the literature on the subject that the coastal State has the right to enact legislations relating to the load-line and wireless installations on vessels passing through its territorial waters. In practice, however, these regulations are never prescribed, and, if they were, they would be useless, because the laws concerning wireless installations and the load-line apply only to vessels calling at a port.

Moreover, the tendency of certain delegations to emphasise the rights of the coastal State is also due to the fact that, in certain circumstances, it is of great importance for that State to have control of the sea — for instance, in cases of smuggling. Those rights are, however, exercised, not only in territorial waters, but also in adjacent waters. Nevertheless, the rights of the coastal State over its territorial waters must not be unduly extended on this account.

To return to the vexed question of the definition of the right of innocent passage. In my opinion, if we look at this question logically, the expression " right of innocent passage " is not the true foundation on which we can build. The point is that, where passage is innocent, it is always allowed. This rule is perfectly simple and cannot be subject to the reservation of the rights of the coastal State or of any other rights, because it is an explicit and definite principle of international law.

We are faced with the necessity of finding a compromise, and this solution has behind it the experience of centuries. It seems to me that the governing idea of the British amendment is right, and that the whole proposal should be taken as a basis for our discussion.

What, in fact, have we to do? We first have to define the right of innocent passage as it results from the present conditions of international life. That involves certain consequences, some of which were mentioned by M. de Ruelle. We then have to lay down that a State must allow the innocent passage of vessels. We might add that, on the other hand, the coastal State may, if the vessel abuses the right of innocent passage, inflict on it the penalties and disciplinary measures which are at its disposal.

It is also necessary to define the extent of the right of regulation possessed by the coastal State. The coastal State is not authorised to regulate the exercise of any right whatsoever. It is a serious mistake to say, as is done in the Bases of Discussion, that the coastal State's right of regulation enables it to require vessels in innocent passage to

follow such and such a route. The coastal State cannot regulate the right of innocent passage in this way. It can only do so when the exercise of that right encroaches upon the domain for which the coastal State, by reason of its sovereignty, may properly enact legislation.

I am, therefore, taking the British amendment as a basis of discussion and should like to make a few other observations. As regards the definition of the right of innocent passage, in view of the present conditions of international life and the reasons for this concept, I consider that the right of innocent passage does not merely belong to vessels passing through territorial waters and to vessels which, on leaving a port, happen to be in territorial waters, but also, and on the same ground — and I refer in this matter to the remarks made by M. de Ruelle — to vessels bound for a port open to international trade. If the port is not open to international trade, it is not necessary to permit innocent passage ; if, however, access to the port is free, the regime of innocent passage holds good. That does not prevent the State to which the port belongs from imposing the relevant conditions, even retrospectively, on the vessel on its arrival at that port.

The question of intention should not be taken into account, because the destination of a vessel may be changed owing to accidents of navigation. A slight alteration should accordingly be made in the definition. As regards the restrictive provisions, I accept the British amendment in this case also.

In my view, it is less important to propose slight changes in form than to lay stress on the importance of the stipulations enumerated in point No. 2, which states that :

> " A coastal State may require foreign ships exercising the right of innocent passage to comply with such regulations as may be prescribed by the local law for the safety of traffic and of traffic channels . . . "

The terms used in the British amendment have been chosen so as to make it quite clear that the coastal State only has the right to regulate navigation where this is necessary for the safety of traffic and traffic channels. The coastal State has not the right to prescribe navigation regulations of any kind applicable to its territorial waters. As I said just now, a coastal State is not entitled to regulate wireless installations on board vessels passing through its territorial waters, because its juridical status does not allow of this right. That is why the precise statement contained in the British proposal is of great value.

Paragraph *(b)* of the British amendment reads as follows :

> " For the protection of the waters of the coastal State from oil and ships' refuse."

I have no observations to make in regard to this point, except that I should prefer a somewhat fuller wording.

Paragraph *(c)* reads as follows :

> " For the protection of any exclusive fishing rights which the coastal State possesses."

This section deals with protection of fishing rights, as proposed by the French delegation in another form. These regulations are provided for in the Convention and may not in any case exceed the needs, interests and rights of the coastal State with regard to the exclusive use of coastal waters.

Consequently, we cannot do better than go back to paragraph 2 of the British delegation's text, which reads :

> " A coastal State may require foreign ships exercising the right of innocent passage to comply with such regulations as may be prescribed by the local law."

In conclusion, I should like to say a few words regarding the amendment submitted by the Swedish delegation with reference to Basis No. 25, namely, charges to be levied on vessels passing through territorial waters.

The Norwegian delegation is entirely in agreement with the Swedish delegation on this point.

Finally, as regards inland waters between the coast and islands situated off the coast, I agree in principle with M. Sjöborg's views.

M. Spiropoulos (Greece) :

Translation : The question dominating the whole of this discussion is that of innocent passage. A number of speakers have already expressed their views on this matter and I shall therefore endeavour to be brief.

The British delegation has said that Basis of Discussion No. 19 embodied two questions of principle — the right of innocent passage and the rights of coastal States in regard to vessels passing through their territorial waters.

The British delegate said that it was necessary to define those rights. I agree with him, more especially since, as it will doubtless be remembered, the United States delegate pointed out at the last meeting that the right of innocent passage was an exceptional right.

For our United States colleague, the primary right is the right of sovereignty — the rights possessed by the coastal State in regard to innocent passage.

In my opinion, this is a question of presumption and of what we take as our starting-point. If we start from the principle of the freedom of the seas, the right of innocent passage is the primary right, and not the rights of the coastal State. We ourselves took the contrary view ; that is to say, we took the principle of sovereignty as our starting-point.

Since we desire to guarantee and strengthen the right of innocent passage, I think we should

do well to accept the proposal submitted by the British delegate and determine the cases in which the coastal State may regulate navigation — that is to say, innocent passage — in its territorial waters.

Nevertheless, although I agree in principle with the British proposal, I am not in agreement with the application of that principle.

The British delegation has enumerated various cases in which the coastal State may prescribe regulations. This enumeration is given in paragraphs *(a)*, *(b)* and *(c)* of its proposal, and in paragraph *(d)* it states that :

> " *(d)* For such other matters as, in accordance with international usage and practice, a coastal State may regulate in the case of foreign ships exercising the right of innocent passage . . . "

In this last paragraph *(d)*, reference is made to international usage.

If points *(a)*, *(b)* and *(c)* are not included in the international usage and practice referred to in paragraph *(d)*, the rights of the coastal State will be increased. I cannot accept this solution, because we are here to effect progressive codification, and, as the Norwegian delegate rightly remarked, we must carry out our task in a liberal spirit.

It is, of course, possible that paragraphs *(a)*, *(b)* and *(c)* are in accordance with existing law. In that case, as M. Giannini has already pointed out, these three paragraphs are covered by the fourth part ; that is to say, paragraph *(d)*. Paragraphs *(a)*, *(b)*, and *(c)* would thus be superfluous.

The British delegate said, however, that the rights of the State should be defined. I should like to point out that, if we say that a State may take any measures which are in accordance with international usage and practice, we are not defining the rights of the State.

What we have to do is to codify, and not simply to refer to international usage and practice ; otherwise, we shall merely be leaving things as we found them.

I admit that the British delegate's idea is an excellent one ; that is to say, the idea, but not the application.

As has been proposed, we must specify all the cases in which a coastal State is entitled to regulate navigation and the right of free passage in particular. If we mention only a few cases in which a State is allowed to regulate this navigation, we may be faced with a situation such as that which arose in connection with the famous *Lotus* case. A State might prescribe regulations based on one of the cases enumerated in the Convention, but which were neither contrary to nor authorised by the Convention.

Since we took as a basis the principle of the sovereignty of the State, the latter will be free to do anything it pleases, provided it makes innocent passage possible. It can, however, make that passage very difficult.

For this reason I am entirely in agreement with the Norwegian delegate's proposal. It is necessary to create a presumption in favour of innocent passage. It is also necessary to fix, enumerate and limit the rights which the State is allowed to exercise in regard to vessels passing through its territorial waters.

I also agree with what the Swedish and Belgian delegates have said in regard to the necessity for effecting codification in a liberal spirit. The principle has already been applied in the regulation of navigable waterways, and the Czechoslovak delegate has advocated a rule that is applicable on international waterways, namely, in every case a presumption in favour of the freedom of transit. The same principle should be applied to territorial waters.

In conclusion, I would say that I support, if I may so express myself, all amendments in favour of the right of free passage.

Sir Maurice Gwyer (Great Britain) :

I only wish to add a very few words regarding the definition of the right of innocent passage which excludes ships proceeding to a port of the coastal State. If I remember rightly, the books and the writings of jurists exclude from the right of innocent passage, as a general rule, both those ships which are proceeding to a port of the coastal State and those which are proceeding from a port of the coastal State.

I have suggested for the consideration of the Committee that, in any event, ships which are proceeding from a port should be regarded as included among the ships to which the right of innocent passage ought to be accorded by a coastal State, and for the following reason. The ship *ex hypothesi* has been in the port by the permission of the coastal State itself, and, after it has finished its business there, it has no choice, when it leaves the port, but to proceed through the territorial waters of the State in order to regain once more the high seas.

In the above circumstances, I would suggest that, in principle, the right must be granted to navigate territorial waters from the port to the high seas, provided that right is exercised innocently and without infringing the laws of the coastal State. If a case should arise in which the ship, while present in the port, has broken the law of the coastal State, then, of course, the coastal State must have the right to exercise its sovereign power over the ship, if necessary, by pursuing it through territorial waters possibly on the high seas. In that case, however, the passage is not, of course, an innocent one, and there is no breach in the principle which I suggest that the Committee ought to adopt.

The delegate of Norway has suggested that the same rule ought to apply to ships proceeding through territorial waters to a port of the coastal State, and he advanced very strong arguments also in support of that view. I am not wholly convinced by his arguments, but I am still open to conviction.

It seems to me that there is a real distinction between the two cases, because I can conceive of cases in which, when a ship has entered

the territorial waters with a view to proceeding to a port, the coastal State may say : " In the interests of our Customs laws, our sanitary laws — or whatever it may be — it is necessary for us to board your ship, to examine it, to to examine, perhaps, the crew, before you actually enter the port into which you are going ". It may be a matter of the safety of the State ; it may be a matter of convenience both to the ship itself and the port authorities ; it may save time that that examination should take place or be begun at the earliest possible moment ; that is to say, as soon as the ship enters the territorial waters.

If the coastal State can exercise those rights, rights which, of course, it could not claim to exercise over a ship proceeding through the territorial waters but not going to a port at all, then it seems to me that the case is different and that the coastal State must be allowed to assert rights over the ship which is to enter the port, which it cannot lawfully claim to exercise over the ship which is merely exercising the right of innocent passage. As at present advised, I feel, therefore, that I must maintain a distinction between the case of a ship entering a port and the case of a ship leaving the port, to seek again the high seas.

I should like to add one word on paragraph *(d)* of the second clause in my new Basis No. 19. It has been criticised on the ground that it is not sufficiently precise, and that, if we are codifying international law, we ought to state exactly what may be the rights of the coastal State over the passing ship. In my view, not only is it impossible to foresee all the cases which may arise in future, but, at this stage in the progress of codification, it would be most unwise so to stereotype international law and usage as to leave no flexibility for future developments and occurrences, because international law is a growing and an organic thing which develops with the course of events. I see it — if I may use the metaphor — as something which is still fluid and is gradually taking definite shape.

In some directions the crystallisation of principle has proceeded so far that it is possible for a Conference such as this to put into words what the actual principles are : but there still remains an area in which the law is still fluid and ought to be allowed to crystallise gradually and without being forced. It is in order to cover that area of international law that I have ventured to include my paragraph *(d)* in the second clause of Base No. 19.

I have made these observations in order to meet the criticisms which the delegate of Greece has just put forward. This is a point to which I attach great importance, and I should be very sorry to see paragraph *(d)* cut down in any way. In fact, as the Belgian delegate has pointed out, the proposed text is drafted in almost exactly the same terms as the clause in the Barcelona Convention dealing with liberty of transit or access to ports. It has therefore considerable authority, and, in adopting it, the Committee would be doing no more than following what is in existence at present.

Vice-Admiral Suric (Netherlands) :

Translation : I would ask the Chairman whether the time has not come to appoint the proposed Sub-Committee to co-ordinate the various amendments, so that we may get on with our work.

The Chairman :

Translation : I had intended to make this suggestion myself at the close of the discussion.

Dr. Schücking (Germany) :

Translation : The German delegation is prepared to accept Basis of Discussion No. 19 in the form proposed. It is also prepared to accept in its general lines the British amendment, which furnishes a very valuable explanation of the contents of Basis No. 19.

There is, however, one reservation which we have to make in regard to the British amendment. The German delegation is not in favour of restricting the idea of free passage to vessels proceeding to a port of the coastal State. I have studied the legal question of territorial waters for more than thirty years, and have never come across any case in which a distinction was made between vessels leaving a port or merely crossing territorial waters and vessels proceeding to a port. A distinction of this kind is impossible. Moreover, among the regulations to which vessels are subject in territorial waters, Customs supervision should perhaps be expressly mentioned.

Further, I think we should accept the Portuguese amendment to add a provision to the effect that, if a vessel anchors for a longer period, in territorial waters than is strictly necessary, it may be subjected to the same regime as a vessel in port. On the other hand, why should a vessel which is legitimately anchoring in territorial waters be subjected, in accordance with the amendment proposed by the Roumanian delegation, to a more severe regime than that applicable to a vessel in port? I think that would be a violation of the ancient principle governing international maritime law, namely, respect for misfortune. A year ago all the ships in the Baltic were icebound, but no coastal State thought of subjecting the vessels in its frozen territorial waters to the regime of vessels in port. I therefore propose that the Committee shall reject the Roumanian amendment and should not, as one of the United States amendments suggests, omit mention of the right of anchoring.

M. Novakovitch (Yugoslavia) :

Translation : I should like to make a few observations on behalf of the Yugoslav delegation. In the first place, we agree with the very clear statement made by the Swedish delegation, subject to one slight alteration in the amendment proposed by that delegation. This amendment states that " the right of

passage also applies to inland waters . . . if such waters are ordinarily used . . . " I do not think the Swedish delegation will object to the following slight alteration in the wording : " The right of passage only applies to inland waters . . . in so far as such waters are normally used . . . "

M. Sjöborg said that the majority of the points in the French amendment were covered by the British amendment. That is true. We think, however, that it would be desirable to retain these points ; in particular, the stipulation that fishing vessels will not be allowed actually to engage in fishing and that commercial submarines will not be entitled to make use of the right of passage except on the surface.

In short, the Yugoslav delegation is prepared to accept Basis of Discussion No. 19 with the additions and amendments proposed by the Swedish delegation and the stipulations contained in the French proposal.

M. Gidel (France) :

Translation : The French delegation had the honour to submit certain proposals in regard to the drafting of Basis of Discussion No. 19, and, after hearing the very interesting observations put forward by various delegates, I should like to explain our views.

I am glad to find that the substance of the French delegation's proposals has not given rise to any opposition. The only point raised by some delegates, and in particular by M. Salvioli and M. Sjöborg, was whether it was desirable to insert these stipulations in the text. The French delegation does not attach any importance to this question and presumes that the whole matter, in regard to which we are agreed in substance will be dealt with in the report.

After making these few observations on points of drafting, I should like to define our attitude in regard to the British delegation's proposal. The French delegation desires to state that, generally speaking, it is prepared to support this proposal, which constitutes a very important addition to Basis of Discussion No. 19.

The first part of the British amendment is concerned with the definition of the right of innocent passage. Except for the very striking observations made by the German delegate, there does not appear to be any serious opposition to that definition. A few drafting amendments might be made, but, in substance, I think we are agreed that this definition of innocent passage is an excellent one. I notice that, at all events in the English text, this definition appears to apply not only to merchant ships but also to warships, since — although I do not wish to touch on a point which will be dealt with later — it embraces in a single text both merchant ships and warhips ; whereas, in the French proposal (document No. 16, page 3), the latter are dealt with separately in No. IV.

The second part of the British proposal defines the rights of the coastal State. In this case also, the French delegation considers that it was highly desirable that our Committee's attention should be drawn to this point, and that a text defining those rights should be inserted in the Convention. No one questions the right of the coastal State to prescribe regulations. The only doubtful point is whether the text should include an exhaustive list or should merely give examples. The British delegation formulated a certain number of special points under *(a)*, *(b)* and *(c)* and then laid down a general formula in *(d)* which makes it possible to regulate a certain number of matters not covered by the previous paragraphs.

The French delegation agrees with the views put forward by Sir Maurice Gwyer. It would, we think, be unwise as the present time to give an exhaustive list ; we should follow the example mentioned by Sir Maurice Gwyer a moment ago and allow a certain flexibility in the regulations, as was done in the Barcelona Convention on Transit. The French delegation would, however, prefer the ideas to be expressed in a somewhat different form from that in which they were submitted by the British delegation. We do not think the British delegation would object to this in principle, in view of the fact that the text submitted by it was preceded by a statement that it was open to amendment.

We should therefore like to suggest a slightly different formula for examination by the Sub-Committee. It might perhaps be sufficient to state that the sole object of the regulation is to supervise and ensure the innocent character of the passage, adding certain points of special importance such as those mentioned by the British delegation under *(a)*, *(b)* and *(c)*.

This, then, is the attitude of the French delegation to the British delegation's text, which has been exhaustively discussed this morning. I would repeat that the French delegation is prepared to accept the British proposal as a whole, subject to certain drafting amendments.

M. Cohn (Denmark) :

Translation : I merely desire to say a few words in support of the observations made by the Norwegian and German delegates in regard to vessels proceeding to a part of the coastal State. I fully realise the necessity for the exercise of control even in certain cases,

before the vessel enters the port, as proposed by the British delegation. I think, however, that it would be going too far to exclude such vessels entirely from the right of innocent passage, which would result from the present wording. It would be better to make, for this case only, a special exception with reference to the right of control of the State to which the port belongs, instead of restricting the general rule of innocent passage so as to exclude the vessels in question from that right.

Viscount Mushakoji (Japan) :

Translation : I merely desire to express the views of the Japanese delegation on the United States amendment to Basis of Discussion No. 19.

The Japanese delegation agrees with the Italian delegation that the text of the Basis of Discussion should be maintained. As regards the British delegation's proposal concerning the definition of the right of innocent passage, I agree that such a definition is necessary but, like M. Raestad and Dr. Schücking, I do not think we should make a distinction between vessels passing through territorial waters and vessels entering a port. The principle that the right of innocent passage does not in any way restrict the power of the competent authorities to apply such measures as they may think necessary is another question altogether.

As regards the innocent passage of foreign warships through territorial waters, the Japanese delegation does not agree with the United States delegation and would like to see a provision on warships inserted in Basis No. 19.

M. Giannini (Italy) :

Translation : I first wish to raise a point of order and, secondly, to submit a practical proposal. As regards the point of order, I should like to draw the Committee's attention to the fact that this lengthy discussion has shown that we are agreed as to innocent passage, but that it is necessary to define this term.

I should also like to point out to the Committee that this principle is briefly defined in Article 2 of the Paris Convention on Aerial Navigation, and that, so far as I am aware, no difficulty has so far arisen in this connection. Since, however, we are almost all agreed, let us draw up in a practical spirit a very simple definition of innocent passage. I propose that other questions involving shades of meaning which it is impossible for us, and, perhaps, even for a Sub-Committee, to discuss should be left on one side.

I suggest that the Committee should take as a basis of discussion, or rather as a basis of decision, the British proposal and the Basis of Discussion contained in the original draft.

Other problems, such as the question of definition, could, I think, be settled more easily by the Sub-Committee. In this connection, would it not be simpler to adopt the expressions " naval vessels " and " civil vessels " ? We might also refer to the Sub-Committee the examination of the question whether it is necessary to lay down rules relating to warships and, if so, in what form. I do not think that opinions on this matter differ to any great extent.

The amendments submitted by the Swedish and Norwegian delegations have not yet been fully examined by the Committee and I do not think they can be regarded as approved.

The Chairman :

Translation : M. Giannini's proposal is a very useful one and I am prepared to accept it. The Committee is, in fact, agreed in regard to the substance of the question, and the best thing to do is to refer the Basis of Discussion and the British proposal, together with the other relevant amendments, to the Sub-Committee which we are going to set up and which must take account of the opinions expressed during the discussion, and, in particular, the observations of M. Sitensky and M. de Ruelle concerning the regime of international waterways and the Barcelona and Geneva Conventions. These refer to " civil vessels ". On the other hand, I shall have to consult the Committee on M. Giannini's proposal to refer the examination of the question of naval vessels to the Sub-Committee. In view of the necessity for speeding up our work, I support M. Giannini's proposal.

M. Giannini's proposal was adopted.

15. APPOINTMENT OF TWO SUB-COMMITTEES AND OF THE DRAFTING COMMITTEE.

The Chairman :

Translation : I think we should now appoint the Sub-Committee. I propose that it should consist of twelve members and should comprise the delegates of the following countries : Belgium, Cuba, Finland, France, Germany, Great Britain, Italy, Japan, Norway, Portugal, the United States of America, Yugoslavia. The Committee's Rapporteur, M. François, will also act as Rapporteur to the Sub-Committee, so that the necessary co-ordination may be ensured. The Sub-Committee will elect its own Chairman.

This proposal was adopted.

The Chairman :

Translation : It is also necessary to appoint the Drafting Committee immediately, so that the provisions in regard to which the Committee is in agreement may be referred to it as and when agreement is reached. This Committee must necessarily be a small one, and I propose that it should consist of the following : M. GIDEL, Sir Maurice GWYER,

M. SJÖBORG, together with the Rapporteur and Chairman of the full Committee.

This proposal was adopted.

The Chairman :

Translation : We shall eventually have to set up a Sub-Committee to examine technical questions.

M. Giannini (Italy) :

Translation : I would propose that we appoint this Sub-Committee at once, so that it can examine the technical aspect of the problems which will subsequently be referred to the first Sub-Committee.

The Chairman :

Translation : I think M. Giannini's proposal a good one, and would suggest that we appoint a second Sub-Committee, the members being drawn from the delegations of Chile, France, Germany, Great Britain, Greece, Italy, Japan, Norway, Poland, Portugal, Sweden and the United States of America. M. François, the Rapporteur to the Committee, will also be a member.

The Chairman's proposal in regard to the appointment of the second Sub-Committee was adopted.

The Chairman :

Translation : I propose that we should next discuss Bases Nos. 22, 23 and 24, so as to give the delegations an opportunity to express their views before these Bases are referred to the Sub-Committee.

I do not think the Swedish delegation's amendment can yet be discussed by the Sub-Committee.

M. Sjöborg (Sweden) :

Translation : I agree. A stipulation similar to the one I am proposing may have to be introduced in the Convention. That depends on the way in which the question of territorial waters is settled.

The meeting rose at 1 p.m.

EIGHTH MEETING

Tuesday, March 25th, 1930, at 10 a.m.

Chairman : M. GÖPPERT.

16. BASIS OF DISCUSSION No. 22.

The Chairman :

Translation : We now have to examine Bases of Discussion Nos. 22, 23 and 24. Experience has shown that it is best to examine each Basis separately. The first two Bases deal with criminal jurisdiction and the third with civil jurisdiction. I propose that we should begin with Basis No. 22, which relates to punishable acts committed on board a merchant ship during its passage through the territorial waters of a State other than that whose flag it flies.

May I state briefly how, in my opinion, this problem is to be understood ? Before doing so, I should like to point out that these questions are easier than they appear to be, and I hope I am not unduly optimistic in saying that I think we ought to be able to reach agreement without any great difficulty.

As regards the cases covered by Basis No. 22, the legal position is as follows : a merchant ship is regarded as an extension of the territory of the State whose flag it flies. A punishable act committed on board a vessel in the territorial waters of a State other than that whose flag it flies may be tried by the courts of the State whose flag is flown by the vessel, according to the laws of that State. On the other hand, as soon as a vessel enters the territorial waters of a State, anything that takes place on board is regarded as happening in the territory of the coastal State. An offender is thus amenable to the jurisdiction of two States. I do not think we are called upon, and neither is it the object of Basis No. 22, to settle this conflict of laws and jurisdictions.

If the offender, after completing the voyage during which the wrongful act was committed, visits the country in whose territorial waters it took place, he may be brought before the courts of that country as well as before the courts of the country whose flag the vessel flies. Each of the two countries may apply to a third country in whose territory the offender has taken refuge for his extradition.

I think we ought to leave this conflict of laws and jurisdictions on one side ; the conflict with which we are concerned is that which may arise between the interests of justice and the interests of navigation. Are we to admit the right of the authorities of the coastal State to stop a ship in order to arrest an offender, obtain evidence, hear witnesses or effect a

search, whatever the nature of the act committed?

It is obviously necessary to find a compromise between the conflicting interests. The main point is that free passage should not be impeded more than is actually necessary in the interests of justice in the coastal State.

For this purpose, Basis No. 22 proposes certain limitations in regard to the exercise of jurisdiction by the coastal State in cases where it would be prejudicial to navigation. It also enumerates the cases to which the exercise of jurisdiction by the coastal State is confined.

The Committee has before it three amendments relating to this Basis, submitted by the British, United States and Danish delegations. I propose to call on the Danish delegate first, as the Danish suggestion is to omit the whole article or to change the nature of the enumeration so as to allow of other exceptions. The United States delegation also considers that other exceptions should be allowed.

M. Lorck (Denmark):

We have proposed some amendments. Firstly, as regards Basis of Discussion No. 20. This point has now been left to the Sub-Committee, and I can only say that, if we find that a proposal is made on the lines of the British proposal, we shall be able to vote for its acceptance.

As regards Basis of Discussion No. 22 we propose to omit the whole article or to insert the following text:

> "Reserving the right of the coastal State to establish in its legislation other rules, the criminal jurisdiction of the State ought ordinarily to be exercised only in regard to crimes or offences committed on a foreign merchant ship passing through territorial waters in the following cases."

We make this proposal because it may be rather doubtful whether a coastal State is able quite to renounce the right of criminal prosecution except in the three cases named in Basis No. 22. It may, for instance, happen that the criminal is a subject of the coastal State. On the other hand, will the coastal State ordinarily and voluntarily take up the position mentioned in the Basis?

Mr. Miller (United States of America):

The United States delegation proposes to state the right of arrest as a general principle rather than in the extremely limited phraseology of the Basis as printed. The point, I think, is this: the distinction, to a certain extent, must lie with the competent local authority. I think the point is covered and the same view expressed in the proposal of the delegation of the United Kingdom. That proposal is to substitute, for Basis Nos. 22 and 23, a sentence to the effect that the crime or offence is, *in the opinion of the competent local authority*, of a nature to disturb the peace of the country. I would accept this text to replace the amendment proposed by the delegation of the United States.

I do not propose to discuss now Clause 2 of the amendment of the delegation of the United Kingdom. This rather concerns Basis No. 23, which it has been proposed to combine with Basis No. 22.

Sir Maurice Gwyer (Great Britain):

The problem before the Committee, is, as the Chairman has said, to reconcile the sovereign rights of the coastal State with the interests of navigation. So far as the British delegation is concerned, it accepts, subject to drafting, the principle embodied in the Danish amendment.

I am not sure that the point is met, as the delegate for the United States has suggested, by the British proposal to refer to the opinion of the competent local authority. In my view, in all matters of crime committed in territorial waters, the authorities of the coastal State must, in the last resort, have the deciding voice. I think, however, that all the members of the Committee will agree that, in the interests of navigation, that jurisdiction should be exercised as little as possible. I think, therefore, that the question is one of drafting to be considered elsewhere.

There is, however, one point to which I wish to draw attention, namely, the question of possible arrests upon ships belonging to a State, ships which are property of the State. I think that is a point which should be dealt with. Clearly ships which are property of a foreign State must not be subjected to the jurisdiction of the local authority; and in the amendment which the British delegation has put forward, it has included ships which are owned by a foreign State. I am not sure that the proposal may not be too wide in view of the Convention which was signed at Brussels in 1926, in which a distinction was drawn between merchant ships which are the property of a foreign State and merchant ships which, in the words of the Convention, are "exclusivement affectés à un service public". I submit for the consideration of the Committee that words to that effect should be embodied in this Basis, and that jurisdiction of the coastal State should be excluded in the case of those ships.

Subject to that point I do not think there is really any substantial difference between the amendments proposed by the Danish delegation, the United States delegation, and our own.

Dr. Schücking (Germany):

Translation: The work of codification requires the establishment of fixed rules, and for that reason we ought to reject the Danish and United States amendments, which contain the words "ordinarily" and

"generally" respectively. Our Italian colleague yesterday correctly stated the rule establishing an international law and embodying the term "in general".

The German delegation prefers the text of the British amendment.

M. Giannini (Italy):

Translation: I should like to draw the Committee's attention to the fact that the problem we are now going to discuss has already been definitely regulated on general lines. It is not one of those questions very closely linked up with custom which we have to try to discern clearly and to codify. I would even go so far as to say that the question has already been codified too broadly.

Every State has, indeed, already adopted very wide regulations on the question. In addition, Conventions concluded between different countries on this matter vary to some extent. In these circumstances, it would not seem advisable to employ the expression "in general". As I said yesterday, and as Dr. Schücking repeated this morning, the words "in general" mean nothing at all, or practically nothing.

What we have to do is to ascertain and fix fundamental principles which would enable a general, though very definite, rule to be laid down.

If we look at the matter from this point of view, what will be the result, seeing that there is a very large number of special Conventions in existence? It would be impossible to ask States to modify the forty or fifty consular or navigation Conventions they have concluded in order to apply the new rule. That would be placing them in a somewhat difficult position, as they would have to apply for the revision of all existing Conventions. This would be requiring too much of them.

Should we agree to lay down a definite general rule, then it will be sufficient, in future, if new Conventions are brought into harmony with this rule. Stated shortly, there would be a period of transition when the existing rules and special Conventions would remain in force, and the general rule which is now being framed would serve as a basis for the preparation of new Conventions.

In my opinion, we must adhere as closely as possible to the Basis of Discussion which codifies principles that are generally recognised with a few slight differences.

I am not in favour of accepting the amendment submitted by our United States colleague.

In sub-paragraph *(b)*, the British delegate states:

> "*(b)* If the crime or offence is, in the opinion of the competent local authority, of a nature to disturb the peace of the country or the maintenance of order in the territorial waters."

I fully understand the British delegate's idea. He thinks that the local authority will actually decide these cases, and he is right to say so clearly. I hold, however, that the power possessed by the competent local authority is being over-emphasised, and some local authorities are occasionally — I will not use too harsh a term — too zealous. Too much should not be left to the discretion of the local authorities, as this may in practice lead to the rules being applied in different ways.

In paragraph 2 the British delegate states:

> "(2) If the crime or offence in respect of which the arrest is to be made is committed within the jurisdiction of the coastal State elsewhere than on board the ship, or within the jurisdiction of another State which has made a lawful demand upon the coastal State for the extradition of the offender."

That is a question which is settled to some extent in extradition treaties.

I would accordingly ask the Committee to retain Basis of Discussion No. 22 as at present drafted.

M. Mattei (Roumania):

Translation: I should like, in the first place, to reply to Dr. Schücking, delegate for Germany, who opposed the amendment which I submitted yesterday. I think his opposition is based on a misunderstanding, since the sole purpose of my amendment was to assimilate, from the point of view of jurisdiction, the regime of vessels making a prolonged stay in territorial waters to the regime applicable to vessels in the ports. Perhaps I did not make myself sufficiently clear.

I would point out that the regime for ports is not more severe than that applicable to vessels in territorial waters.

The Chairman:

Translation: This point relates to Basis No. 23, which will be discussed later. At present, the discussion is confined to Basis No. 22.

M. Sjöborg (Sweden):

Translation: As regards the substance of Basis No. 22, the Swedish delegation agrees with the Italian delegation. For the reasons set forth by that delegation, we consider it preferable to retain Basis No. 22 in its present form, subject to any drafting amendments.

The British amendment would exclude from the provisions which concern us the case of a vessel belonging to a foreign State. That is a detail, but an important detail, because we shall find the same case excluded in the subsequent provisions. In my opinion, it would be better not to mention vessels belonging to a State. As the British delegate points out, we have to take account of an international Convention — the Brussels Convention of 1926. That Convention has not been ratified, but it may be ratified, and we must bear this in mind. It lays down the principle that vessels belonging to States or operated by them are, with certain exceptions,

assimilated to private merchant ships. In these circumstances, I think that the regulations applicable to State-owned vessels in the matter of jurisdiction lie outside our competence.

I will not dwell upon the individual provisions of the Brussels Convention; I will merely point out that the principle it lays down — the assimilation of the two categories of ships — also covers the responsibility of the owner, the competence of courts, judicial actions and so on. I am afraid we shall encounter many difficulties if we attempt to deal with this question of State-owned vessels. In any case, it seems to me that we cannot expressly exclude them from the scope of our Convention, as the British delegation proposes, or we shall be coming into conflict with the Brussels Convention. I therefore think it would be better if we made no reference at all to the existence of State-owned vessels. We might, of course, speak of " vessels not employed in commerce ". That would be less dangerous, but I think it would be better to avoid doing so.

M. Sitensky (Czechoslovakia):

Translation: I am entirely in agreement with M. Giannini, and I cannot accept the proposal made by the United States delegation to add the word "generally ", which is too vague and might give rise to difficulties in regard to the interpretation of the rule. Moreover, I do not think this proposal is in accordance with our object. Our aim is to allow the coastal State to exercise criminal jurisdiction only in cases were the interests of that State or the interests of navigation make this necessary. The text of the Basis of Discussion meets the case perfectly and I propose that it should be left as it is.

M. de Ruelle (Belgium):

Translation: The British delegation's proposal that mention should be made of Government vessels serves much the same purpose as the Swedish delegation's suggestion that they should not be mentioned. Undoubtedly, Government vessels have privileges and immunities the extent of which varies according to the ideas of the individual countries. The question has arisen whether these privileges should exist when — as was the case more particularly in the later years of the war and the post-war years — State - owned vessels carry on commercial operations. This question — or, at all events, some of its aspects — was dealt with in the Brussels Convention, and I think we should leave it to be settled by that Convention, without even mentioning it. Indeed, we cannot mention that Convention, because it has not yet come into force, and I think there is no need for us to refer to it.

I believe I can say, however, that the difficulties which have hitherto prevented the ratification of that Convention are on the point of being removed, and that in a few months' time it may be submitted for ratification to the States which signed it.

I therefore consider that we should omit all mention of this matter.

M. de Magalhães (Portugal):

Translation: The Portuguese delegation proposes that we should lay down at the beginning of Basis No. 22 the principle that foreign vessels passing through the territorial waters of a State are not thereby subject in civil and commercial matters to the legislative and judicial jurisdiction of the coastal State.

In this connection, no distinction should be made between warships and other vessels, nor as to whether the passage is innocent or not.

As regards criminal jurisdiction, the principle is the same. Exceptions must, however, be allowed, and the Portuguese delegation is in favour of the exceptions specified in the British proposal. In the case of the vessels to which this Basis is to apply, the Portuguese delegation considers that no distinction should be made between vessels passing through the territorial waters of a coastal State, whether this passage is innocent or not; it should, however, be stipulated that this jurisdiction shall apply only to foreign vessels other than warships.

The British proposal also excludes vessels belonging to a foreign State. I had intended to draw the Committee's attention to the Brussels Convention, but the Swedish delegation has already done so, and has proposed that no reference should be made to State-owned vessels. Personally, I think we should reconcile the two proposals, or bring the Convention which we are elaborating into line with the Brussels Convention. In Article 1 of that Convention, reference is made to sea-going vessels belonging to States or operated by them; Article 3, however, provides that:

> " The provisions of the two previous articles shall not apply to warships, Government yachts, police vessels, hospital ships, auxiliary vessels, supply ships and other vessels belonging to a State or operated by it, and employed exclusively, at the time when the debt was contracted, for governmental and non-commercial purposes. "

In this Convention, a distinction is therefore made between vessels belonging to or operated by a State and used for purposes of trade, and vessels belonging to or operated by a State and used for non-commercial governmental purposes. I think we should make the same distinction in our Convention as has been made in the Brussels Convention.

I shall submit a written proposal defining the Portuguese views on the points to which I have just referred.

M. Spiropoulos (Greece):

Translation: I agree with M. Giannini's observation with reference to the words " in general ", and consider that this expression should be avoided.

As regards the question of State-owned vessels, I agree with the Swedish delegation that it would be better to omit reference to this matter. However, if agreement on this point is not possible, I think we could arrive at a compromise by accepting the proposal made by the last speaker.

M. Raestad (Norway):

Translation: The differences between Basis of Discussion No. 22 and the British amendment relate to two points. In the first place, the British amendment proposes to replace the words "the criminal jurisdiction of the coastal State may not be exercised" by the words "a coastal State may . . . arrest and bring to justice". Secondly, the words "in the opinion of the competent local authority" are added. These are the two differences I have noted, apart from the question of State-owned vessels.

I must say that I should prefer to take the British amendment as a basis of discussion, because the first change to which I have drawn attention is, I think, an improvement. It would be better to take as our starting-point the determination of the right of the coastal State to exercise criminal jurisdiction by force; that is to say, the right, in the case of a vessel in passage, to arrest a person on board that vessel. As shown by the British amendment, this would simplify matters and enable Bases Nos. 22 and 23 to be combined.

As regards the inclusion of the words "in the opinion of the competent local authority", I am inclined to agree with M. Giannini and other speakers that it would be better to omit them. I have no desire to curtail the right of the coastal State to exercise criminal jurisdiction. In practice, however, if the local authority informed the master of a vessel that a crime committed on board his ship was of a nature to disturb the peace of the country, it would be difficult for the master to raise any objection, unless it was obvious that the claim was not justified or was merely a pretext. The inclusion of the words in question might expose the masters of vessels to serious consequences. The words "if they are of a nature to disturb the peace of the country" are sufficient.

Consequently, I do not think we should insert the words "in the opinion of the competent local authority", which are not in accordance with the system which we are engaged in building up. We could say, as we have done elsewhere: "subject to other rules of international law", which would afford the necessary guarantees.

As has been pointed out on more than one occasion, what we have to do is to lay down very precise rules. The great merit of British proposals is that, in general, they set forth precise rules. The words "in the opinion of the competent local authority" should therefore be deleted.

As regards the question of treaties already concluded, this does not seem to me to give rise to any great difficulties, because States will, in every case, be free to make mutual concessions, if they so desire, by means of bilateral treaties. We are merely laying down the preliminary rule.

With reference to State-owned vessels, the Brussels Convention deals, I think, with civil matters, whereas we are now concerned with criminal jurisdiction. Personally, I should be quite willing to accept the solution proposed by Sir Maurice Gwyer, namely, that vessels exclusively engaged in a public service should be excluded.

I fail to see how this question can be settled by definition. Here, again, we should have to refer to public international law, which is possibly very vague on this matter, or to a special Convention to be concluded later. But this problem is not so difficult that it cannot be solved. I think we ought to be satisfied with the positive solution mentioned by Sir Maurice Gwyer.

M. Giannini (Italy):

Translation: I regret to have to speak again, but I entirely forgot the question raised by the British delegation in regard to State-owned ships, a question on which we must be absolutely clear.

It was on the initiative of Great Britain that the Convention on Government-owned ships was concluded in 1926. This Convention, which in certain aspects is very limited in scope, is in some other respects a general Convention. The articles which form the real centre of the Convention seek to determine the limitations of responsibility in regard to State-owned vessels. That was the immediate object of the Convention. But it also contains — and this was due to the British initiative — general rules codifying various matters in regard to Government-owned ships.

I should like to add a few words to what the Belgian delegate has said. I am betraying no secret when I tell you that the Brussels Convention was transmitted to the Governments after signature and that they were asked whether they were prepared to ratify it. The British Government, when about to ratify the instrument, considered that certain rules in the Convention required elucidation, and that the explanations would have to be included in a protocol signed when the ratification came into force and the instruments of ratification were exchanged. In other words, an interpretative protocol was required.

That is the point where we stand at present. I cannot say anything definite as regards my own country, but it may not be very difficult to secure ratification at a very early date. I can, however, say that the Convention will be in force, if not in a month, at least during the present year.

I now desire to draw the Committee's attention to the fact that all special Conventions have a life of their own. If, however, we endeavour to establish a few special rules whenever we are confronted with particular problems, we shall be introducing unnecessary

elements into the Convention and perhaps be compelled, in return, to drop matters which are very useful.

That being the case, I think it might be better — and I hope our English friends will agree with me on this point — to omit this problem, and I would also ask our Portuguese colleague not to press his proposal.

Everything essential as regards State-owned vessels is contained in the Brussels Convention, which has indirectly regulated their juridical status. I accordingly think that there is no need to lay down special rules for inessential problems.

I would once more ask the Committee to accept Basis of Discussion No. 22, as drafted by the Committee of Jurists.

Abd el Hamid Badaoui Pasha (Egypt):

Translation : I fully agree with M. Giannini's proposal that Basis of Discussion No. 22 should be accepted in its present form.

The British amendment proposes three changes in this Basis. The first is to insert the words " may take steps to arrest and bring to justice ". I do not know whether the object of the proposed change is to substitute a clearer expression for " criminal jurisdiction " or whether it aims at splitting up the jurisdiction of the coastal State by depriving it of a certain part of that jurisdiction. In either case, the British wording may give rise to some ambiguity.

In this connection, I should like to compare Nos. 1 and 2 of the British amendment. No. 1 refers to territorial justice, whereas No. 2 deals with the justice of another State which might in some cases apply for extradition. In the British proposal, the same term " to bring to justice " is used in both cases, although the justice differs in the two cases. The expression is ambiguous and adds nothing to the clearness of the words " criminal jurisdiction ". I accordingly prefer the text of Basis of Discussion No. 22 as at present drafted.

Moreover, the expression " other than a ship which is owned by a foreign State ", which Sir Maurice Gwyer suggested might be qualified by the words " exclusivement affecté à un service public ", has given rise to numerous objections. In my view, this question has nothing to do with the object for which we are assembled. All matters relating to the question should be left to the relevant Convention.

The Norwegian delegation has pointed out that the Brussels Convention is incomplete because it does not deal with criminal jurisdiction. We are not called upon to complete Conventions of a similar nature to ours which are already in existence. It is not our duty to take ideas from other Conventions and tack them on to our Convention. That would be going too far and would make our task, which is already a difficult one, still more complicated. I think all matters relating to the status of State-owned vessels should be left to the Brussels Convention. The question should not be split up but should be examined as a whole. If we singled out this particular aspect of the status of vessels owned by States (criminal jurisdiction), we should not have all the data necessary to enable us to form a sound judgment on the matter, and we should run the risk of adopting resolutions which might conflict with that of the Brussels Convention.

We should be hampered by being obliged to consider criminal jurisdiction in regard to these vessels without having the whole of the relevant regulations before us.

In conclusion, I am in favour of the proposal to delete the words " in the opinion of the competent local authority ", because the question of the competence of the coastal State would be left entirely to the discretion of the local authorities ; whereas, in a dispute between the coastal State and the flag State, there should be some sort of objective criterion to enable the latter State to decide whether or not the safety of territorial waters is imperilled.

I accordingly propose the adoption of the Basis of Discussion in its present form, with the addition suggested by M. Giannini ; that is to say, subject to the provisions of any special Conventions which may be in existence.

Sir Maurice Gwyer (Great Britain):

I have been very much impressed by the remarks of several speakers — the delegates for Norway, Egypt, and Italy — with regard to the words " in the opinion of the competent authority ", and, on consideration, it seems to me that an objective test would be preferable. I propose that the Basis which the British delegation has put forward should be modified by omitting those words. On the other hand, I think it may be necessary to add words elsewhere in the Basis making it clear the establishment on a firm footing of the sovereignty of the coastal State but with an objective rather than a subjective test.

As regards ships belonging to foreign States, I raised this point because I thought it was one worthy of discussion ; but I see the difficulties. If we start to define ships which are excluded, we may have to go into a very long definition which might create more difficulties than it would solve, and it may be possible for the Sub-Committee later on to consider whether some simple formula, such as " subject to all existing rights of exemption " — or some such phrase as that — would not meet the point.

The third point to which I would like to refer is that of " criminal jurisdiction ". There is a distinction between the existing Basis and the amendment I proposed. It seemed to me impossible to declare that the coastal

State was incompetent to try a crime committed within its territorial waters, but it is possible to say that the coastal State ought not or will not take steps to arrest a criminal on board a ship exercising the right of innocent passage and bring him to justice in its courts. The question is that of competence and the utilisation of executive power, and I wanted to preserve the competence of the State, while saying that, in certain cases, it would be willing or it ought not to exercise those sovereign powers.

Vice-Admiral Suric (Netherlands) :

Translation : The Netherlands delegation would prefer the maintenance of the text of Basis No. 22 in its present form and is of opinion that this Basis is in accordance with our aims.

If, however, the Committee disagrees, we might, as an alternative, adopt the proposal submitted by the British delegate, at the same time bearing in mind the wise counsel given us by our Belgian and Italian colleagues with regard to the treatment on a footing of equality of private merchant ships and merchant ships operated by the State. I think, though, that it would be better to await the ratification of the Brussels Convention.

Lastly, the British amendment states that :

> " A coastal State may, in the following cases, but not otherwise . . . "

That might also be taken to mean that vessels flying the flag of the coastal State were excluded. We must make it quite clear that a merchant ship flying the flag of the coastal State is in every case subject to that State's jurisdiction, and I accordingly propose the deletion of the words " but not otherwise ".

M. de Magalhães (Portugal) :

Translation : The question of vessels owned by a foreign State, is not one to be examined only in connection with the Brussels Convention of 1926 ; it is also a question of principle.

We have to solve the problem which has been so clearly put before us by the British delegate, namely, whether the criminal jurisdiction of the coastal State extends to vessels belonging to foreign States or not.

A distinction is necessary, and we ought, I think, to adopt the distinction contained in the Brussels Convention, not only because this has already been established, but mainly because it is a just and proper distinction.

The Portuguese delegation is of opinion that the criminal jurisdiction of a State applies to a vessel belonging to or operated by a foreign State when the vessel is employed for commercial purposes ; it does not, however, apply to a vessel belonging to or operated by a foreign State when employed for non-commercial governmental purposes.

I also agree with the British representative that the task of finding a formula satisfactory to everybody should be left to the Sub-Committee.

M. de Ruelle (Belgium) :

Translation : As Sir Maurice Gwyer, on behalf of the British delegation, has withdrawn his proposal in regard to Government ships, I should have very little to say now if I were not under a particular obligation to be precise. When the Brussels Convention was signed, I had the honour to be Secretary-General of the Conference which dealt with this question, and it is therefore important that I should give a detailed explanation of certain points.

As M. Giannini rightly remarked, the Brussels Convention on the immunities of Government vessels does not exhaust the whole question. Its Preamble reads as follows :

> " Having recognised the desirability of laying down by common agreement certain uniform rules regarding the immunities of Government vessels . . . "

Thus, part of the problem was examined and settled, but the whole of it was not settled.

The case in question — and it is of quite frequent occurrence — was that of a vessel which, being the property of a foreign State, contracted debts in ports — by purchasing bunker coal, for example — without always complying with the law of the country. Would such a vessel lie outside the jurisdiction of the Sate on whose territory it contracted the debt ?

The Brussels Convention was thus intended to define the immunities of Government vessels as regards civil jurisdiction. Being based on the needs of the States to which such vessels belong, it sometimes places in the same category as government-owned vessels those that are simply chartered by a Government for its own requirements ; particularly for the transport of war material and troops and so on.

It is quite evident why vessels chartered by the State for its own use should be assimilated to warships, or, more generally, to other vessels which are State property. The transport of Government material may not be delayed through seizure or detention, even if the vessel itself is not Government property.

The position is quite different, however, in the case of a vessel which, although belonging to a Government, is used for commercial purposes. As regards immunities in matters of criminal jurisdiction, the circumstances are perhaps not quite the same as in civil affairs. There might quite conceivably be no objection to a member of the crewof a vessel not be longing to the State but chartered by it, if he commits a crime or other offence, being proceeded against by the State in whose territory the offence is committed. Prosecutions of this kind could be carried out without necessarily delaying the arrival of the vessel at its destination.

If we wish to deal with the question of the responsibility at criminal law which may be incurred by the members of the crew of a government-owned vessel, or a vessel which

is to be assimilated to a Government vessel, we should have to draw certain distinctions on the basis — in some cases though not always — of the work of the Brussels Conference. When I mentioned the point just now, therefore, I did not mean that the Brussels Convention would provide a solution for all questions. I simply expressed the view that the general principles of law, taken in conjunction with the preparatory work for that Convention, might help to solve the question with which we are now dealing.

M. Cohn (Denmark) :

Translation : I think the Portuguese delegate is right in saying that this is a question of principle. There are two different conceptions ; some countries consider that the coastal State has jurisdiction, while others are of opinion that in every case the State whose flag the ship flies has jurisdiction.

It is difficult to reconcile these two principles. If the Committee is unwilling to accept our amendment, the only alternative is to keep the Basis of Discussion in its present form replacing the word " exercised " by the words " invoked by that State ". The text would thus read :

> " The criminal jurisdiction of the coastal State may not be invoked by that State in regard to crimes and offences committed, etc. "

The difference is apparent at first sight. Take the case of the member of a crew who commits an offence on board a vessel. He subsequently returns to his own country. According to our legal conceptions the jurisdiction of the coastal State cannot be excluded. If, however, we say that " the criminal jurisdiction of the coastal State may not be exercised . . . " we should be laying down a general rule applicable to all cases.

On the other hand, if we say that " the criminal jurisdiction of the coastal State may not be *invoked by that State* . . . " we merely refer to the time at which the crime was committed. While the coastal State cannot invoke its jurisdiction at that time, the question of principle is left open.

M. Goicoechea (Spain) :

Translation : I do not desire to oppose the reference of this matter to the Drafting Committee. I think, however, that a clear distinction should be made between two questions : that of the exercise of territorial criminal jurisdiction on board a vessel and that of the duties of mutual assistance between the local authorities and the master and officers of a vessel.

Basis No. 22 refers exclusively to the exercise of criminal jurisdiction on board a vessel, and clearly establishes the cases in which it applies. There is a distinction between acts committed on board of a nature to disturb the maintenance of order, and other acts.

The mere fact that the assistance of the local judicial or Government authorities is applied for by the consul or the master or officers of a vessel is not, in my opinion, sufficient reason for the exercise of the coastal State's criminal jurisdiction on board the vessel. A general reservation of the State's rights of sovereignty is necessary.

Like Dr. Schücking and M. Giannini, I am not in favour of the use of expressions such as " in general ", " in principle ", the effect of which is to destroy the force of the provision to which they apply. A general reservation of the rights of sovereignty in these matters is established in the Barcelona Convention of 1921. That Convention states that exceptions to the right of innocent passage shall only be waived with a view to the protection of public security and in emergencies affecting the safety of the State or the vital interests of the country.

To cover these extraordinary cases, an exception to the application of the coastal State's criminal jurisdiction may obviously be allowed. Apart from this, I consider that the wording of Basis No. 22 is quite satisfactory.

Mr. Miller (United States of America) :

In the first place, it seems to me essential to say to what vessels Basis No. 22 is applicable. The matter cannot be left vague and undetermined. What we are really discussing here, I think, is the question of stopping a ship in territorial waters for the purpose of arresting an alleged criminal. This is rather a delicate matter, and it certainly cannot be left in doubt whether some classes of ships can be so stopped and other classes of ships cannot.

Furthermore, this question, assuming that the Brussels Convention comes into force, is not solved by that Convention. As has been pointed out, the question is not covered by the terms of the Brussels Convention and, what is perhaps more important, there are many countries, including various countries represented here — and among them my own— which have not signed the Brussels Convention. It seems to me, therefore, that the Committee must settle this question of the ships which a coastal State may stop for the purpose of arrest. The right should, in my view, be limited generally, in the sense of the amendment as originally proposed by the British delegation, to ships which, for the sake of simplicity, I will call private ships.

Coming to the second point, it seems to me clear that the opening words of the Basis as at present drafted are too wide. The words : " The criminal jurisdiction of the coastal State may not be exercised in certain cases ", or in the French text : " La juridiction pénale de l'Etat riverain ne pourra être exercée ", are in themselves wide enough to exclude jurisdiction at any time. They go beyond the question that we are discussing

now, the question of stopping the ship ; they would exclude jurisdiction over the criminal later in the coastal State. That is not at all the intention. I think, therefore, that, apart from any question of drafting, something in the nature of the British amendment, to the effect that a coastal State may take steps to arrest and bring to justice a person on a foreign ship, would more truly express what we are attempting to do.

Thirdly, I have been very much impressed by the view expressed here that the text should be objective, and I am not disposed to press any proposal that has been put forward in that regard by the delegation of the United States. It seems to be the sense of the Committee that the text should be objectively stated ; and, while I think it is true that the words " in the opinion of the competent local authority " express the present practice, it is difficult to see how that practice can be altered. As a matter of fact, it is rather a delicate matter to say that if a question arose there would be a conflict of view between the authorities and the captain of the ship. I think the delegate from Norway expressed the view that probably the opinion of the local authorities would, for the moment, be respected. However, as I say, I am content to retain the objective statement.

Finally, I wish to repeat that, although the British amendment covers Basis No. 23, it seems to me we are not discussing that Basis ; and, consequently, we are not discussing paragraph 2 of the British amendment.

The Chairman :

Translation : I think I interpret the views of the Committee correctly in saying that everyone is agreed that what we have to do is merely to regulate the cases in which a vessel can be stopped on account of a crime being committed on board while it is passing through territorial waters, and that we also have to specify and limit, according to objective criteria, the cases in which the vessel can be stopped owing to a wrongful act committed on board.

I conclude, therefore, that the Committee approves the idea expressed in Basis No. 22, and the rest is merely a matter of drafting. If you agree, I propose to refer this Basis to Sub-Committee No. 1.

The position is not quite the same as regards the definition of the vessels to which this rule is to apply. Opinions are more divided on this point, and I propose that the matter should also be referred to Sub-Committee No. 1, with a request that it should consider whether a reference to this question should or should not be made in the Convention.

M. Salvioli (Italy) :

Translation : I do not think we can refer the question to the Sub-Committee without examining it more closely. We must be perfectly clear as to whether the question of the conflict of jurisdiction has or has not been settled. Should Basis of Discussion No. 22 be regarded as involving a question of jurisdiction or as dealing merely with the question of the stoppage of a ship ? There appears to be some doubt on this point. For instance, one delegation has proposed that we should replace the words " may be exercised " by the words " may be invoked ". That is a change not of form but of substance. The Committee must, therefore, decide whether it wishes to deal with the question of competence ; and, secondly, whether it is exclusive competence or whether there is a concurrent competence of the coastal State and the State whose flag is flown.

The Chairman :

Translation : I had the impression that the Committee was not in favour of examining the question of the conflict of laws and the conflict of jurisdiction, and that it merely desired to settle the question of the stoppage of a vessel passing through territorial waters. If the Committee agrees to this interpretation, I think that would meet the Italian delegation's objection.

M. Salvioli (Italy) :

Translation : In that case, the question assumes an entirely different aspect. The stoppage of a ship is dealt with in Basis of Discussion No. 23, whereas the question of criminal jurisdiction is a question of competence.

The Chairman :

Translation : I admit that the wording of Basis No. 22 is not very clear. That was why, at the beginningof the meeting, I endeavoured to explain my views on this matter. Basis No. 22 refers to the exercise of jurisdiction. It does not deal with the question of the existence of that jurisdiction ; it merely specifies the cases in which jurisdiction may be exercised. I think the Committee has confined its attention to cases of conflicts between the interests of justice and the interests of navigation.

M. Giannini (Italy) :

Translation : I regret that I am unable to agree with the Committee. At the same time, I am not sure that the Committee is in agreement with itself. The problem is always the same, whether we look at the formula employed by the experts or that submitted by the British delegation. The former state that " the criminal jurisdiction of the coastal State may not be exercised ", while the British delegation declares that " a coastal State may take steps to arrest and bring to justice . . . " While, therefore, there is a difference in form, there is none in substance. Moreover, a State cannot exercise jurisdiction unless it possesses competence for the purpose. Our agreement, therefore, merely consists in recognising the differences which divide us.

The question is not clearly stated and I wonder whether the Sub-Committee is in a position to settle it. I would draw the attention of the Chairman of the Sub-Committee to this point. We say that we are unable to settle the question of competence, and yet we are settling it.

I accordingly think that the Committee should clearly state whether it desires to deal with the question as stated in the two formulas proposed. In substance, what we have to do is to settle whether there is exclusive competence or concurrent competence. The essential principle has to be determined. All other questions are matters of detail.

Abd el Hamid Badaoui Pasha (Egypt):

Translation: I fail to see that there is any difficulty. The Basis of Discussion lays down that "the criminal jurisdiction of the coastal State may not be exercised . . . ." That does not exclude the possibility of another jurisdiction. The Committee has clearly shown its intention of limiting the cases in which the jurisdiction of the coastal State may be exercised. That is the only point at issue. The question of concurrent jurisdictions, and still less that of settling the question of the conflict of jurisdictions, does not arise.

M. Giannini (Italy):

Translation: This is not consistent with our previous vote. In view of the interpretation given by the Chairman the question is merely one of police measures. If the question is one of competence, it does not relate only to the power possessed by a coastal State to stop a vessel. Whether the competence is concurrent or exclusive is a different problem. In its essence, however — and this is the point I wish to make — the question is one of competence.

M. Sitensky (Czechoslovakia):

Translation: The question of competence has, I think, already been settled in Basis No. 1, in which the principle of sovereignty was adopted. We are no longer dealing with the question of the jurisdiction of the coastal State, but of the exercise of that jurisdiction, and we must now determine the cases in which a coastal State can or cannot exercise that jurisdiction, having regard to the fact that the interests of navigation must be safeguarded and that a vessel passing through territorial waters must be stopped unless the interests of the coastal State make this essential. I am, therefore, entirely in agreement with what the Chairman has said in regard to the scope of Basis No. 22.

Sir Maurice Gwyer (Great Britain):

If it were a question of the competence or incompetence of the coastal State, I agree that there would be a great deal in what the delegate for Italy says, but it is not so. The question is that of an exclusive competence and a concurrent competence, and, that being so, the practical result is exactly the same.

I entirely agree with the Egyptian delegate. There is no practical difficulty here so long as the competence of the coastal State is admitted, and, if you like, a concurrent competence on the part of the State to which the ship belongs. In my opinion the practical difficulty does not exist.

Dr. Schücking (Germany):

Translation: I entirely agree with the British delegate.

M. de Magalhães (Portugal):

Translation: I support M. Giannini's proposal that the Committee should be asked to state whether it regards the general question of competence as settled or not, or whether it desires to refer that question to the Sub-Committee. If the point has been settled, we should be perfectly clear as to what has been decided.

The Chairman:

Translation: A formal request has been made for a vote. Does the Committee wish to settle the question, and, if so, in what way? Or does it wish to refer it to the Sub-Committee?

M. de Ruelle (Belgium):

Translation: Before we take a vote, we must be quite sure as to what we are voting on. I think we should take an actaul case. We do not propose to settle here questions of competence or of a conflict of competences. I will take the case of a vessel in the territorial waters of a country X. A member of the crew or a passenger commits a punishable act which affects the public order of the coastal State. We are not deciding the question whether the courts of the coastal State must necessarily take cognisance of the act. What we say is that, in so far as it is competent, jurisdiction may be exercised.

The Chairman:

Translation: I am also of opinion that we are not called upon to decide the question of competence. Naturally, as the Italian delegate has pointed out, the jurisdiction of the coastal State can only be exercised if that State has the necessary competence, but it is not for us to decide whether it has this competence or not. If the State's jurisdiction does exist, and in so far as it exists, it can only be exercised within the limits which we have laid down. Those, unless I am mistaken, are the Committee's views on the matter.

M. Giannini (Italy):

Translation: I shall briefly summarise the position of the problem. Basis No. 1 lays down that a coastal State possesses jurisdiction over its territorial waters. We all agree with this principle. If we go on to mention in Basis No. 22 the cases in which the coastal State may not exercise jurisdiction, we are raising the question of competence. If we merely mention the

conditions under which the coastal State may stop a vessel, then the problem is nothing more than one of police measures. The text of the Basis of Discussion and the British amendment both mention cases in which the State possessing sovereignty over the territorial waters may exercise jurisdiction in place of the State whose flag the vessel flies. In certain cases, the two jurisdictions are concurrent.

If we agree on this principle, we might refer the question to the Sub-Committee.

Abd el Hamid Badaoui Pasha (Egypt) :

Translation : It is true that Basis No. 1 establishes the coastal State's right of sovereignty and, in principle, reserves that State's jurisdiction in regard to anything that takes place in its territorial waters. I would point out, however, that, when discussing the first Basis, we mentioned restrictions to this right of sovereignty. For instance, there was the restriction in regard to the right of innocent passage, and also a restriction with reference to the question of jurisdiction. Consequently, we say that, in theory, a coastal State possesses full and complete jurisdiction in regard to crimes and offences committed in its territorial waters ; for reasons of expediency, however, this jurisdiction can only be exercised in certain cases which we determine. This constitutes a limitation of the exercise of sovereignty and not merely the provision of police measures.

What we have to do is to prevent possible conflicts of action between the flag State and the coastal State. We have therefore restricted the public action of the coastal State to certain cases, but have not settled the question of the competence of the flag State. For instance, if a crime has been committed in the territorial waters of a State and proceedings have not been taken by the coastal State, the offender can quite well be prosecuted on his return by the authorities of the State whose flag is flown by the vessel. I think the Committee has been quite consistent.

M. Salvioli (Italy) :

Translation : I do not think that Basis No. 22 provides for the possibility of the concurrent competence of the judicial authorities of the State whose flag is flown by the vessel. This omission can be interpreted in two ways. It may be held that the jurisdiction of the flag State is reserved, but this omission may also be regarded as an argument *a contrario*.

M. Gidel (France) :

Translation : After this long discussion, I must apologise for submitting a few suggestions. It seems to me, however, that, as the question stands at present, if we submit it to the Sub-Committee, the very interesting but very lengthy discussions which have taken place here would simply be repeated. I therefore ask that we give the Sub-Committee very definite indications regarding the question which has been put to us in such an interesting way by M. Giannini and on which we have heard observations from various delegations.

I fully agree with the view expressed by the Egyptian delegate, except as regards the reason which he adduced. He told us that the point at issue was to prevent a conflict of jurisdiction between the coastal State and the flag State. I do not think that is correct. In my opinion, the only point at issue is to prevent hindrances to navigation. At the very outset of the discussion, the Chairman gave us an exact statement of the question.

The case we are studying is that of a conflict between the interests of justice and the interests of navigation. We need not concern ourselves with conflicts between the different penal laws which might be applicable. The coastal State might perhaps not avail itself of the right granted to it in certain cases under Basis No. 22 to have a foreign merchant ship stopped in its territorial waters. The coastal State's right of jurisdiction is reserved even though it does not exercise it. Further, the flag State's right of jurisdiction is reserved, even though the coastal State has exercised this right. In other words, I consider that we do not intend the rule laid down in Basis of Discussion No. 22 in any way to prejudge the question of jurisdiction. We merely want to formulate a rule applying solely to the possibility of stopping vessels and reserving the question of any conflict of jurisdictions that might arise.

The observations I have just laid before you amount, in practice, to this : Could we not ask the Sub-Committee to examine Basis No. 22 and the form in which it should be stated, on the understanding that questions relating to any conflict between the rights of jurisdiction of the coastal State and those of the flag State are wholly reserved ? In that way, we should not be taking up any definite attitude in this question of exclusive or concurrent jurisdiction, which it would be absolutely useless for our Committee to settle.

M. Spiropoulous (Greece) :

Translation : I agree with what the delegates for France and Egypt have just said. Basis No. 1 confers on the coastal State the right to exercise criminal jurisdiction in its territorial waters, but concurrent jurisdiction can, of course, exist.

Basis No. 22, now under discussion, provides, however, that, in certain cases specified in this Basis, a coastal State may stop merchant ships in innocent passage for the purpose of exercising a jurisdiction which may or may not exist, according to the will of the State. You will remember that certain delegates stated that this right of passage includes entry into territorial waters for the purpose of proceeding to a port of the coastal State. If, during that passage, an offence is committed on board, the State may not stop the vessel which is proceeding to one of its ports, except

in the cases enumerated in Basis of Discussion No. 22. Nevertheless, as soon as the vessel arrives at the port after completing its innocent passage, the coastal State is entitled to exercise its criminal jurisdiction.

That, I take it, is the Committee's view of the matter.

M. Giannini (Italy):

Translation: I have not expressed a preference for either solution. We must draw up a practical Convention; that is to say, a Convention which will afford facilities to maritime navigation. We must accordingly reserve the exercise of the coastal State's jurisdiction. I should like to know whether we are agreed on this point.

M. de Ruelle (Belgium):

Translation: There seems to be some misunderstanding on this point, or rather it seems to me that we are deducing from the vote on Basis of Discussion No. 1 a consequence which we certainly did not contemplate.

When we adopted Basis No. 1 we accepted the idea of the sovereignty of the State, over the territorial waters round its coasts. In adopting this theory of sovereignty, however, we by no means intended to settle the question of competence.

A State may, according to its own legal concepts, either ignore or not ignore what takes place on board a vessel in its territorial waters, or indeed in its inland waters.

According to French legal practice, and Belgian also, the French or Belgian judicial authorities need not necessarily take cognisance of everything that takes place on board vessels even in their ports — that is to say, in their inland waters — far less in their territorial waters.

I repeat, when we adopted the theory of sovereignty, we did not settle the question of competence. That question must be left to the law of each individual country. When, however, the country's competence in its territorial waters is established by its national law, it must see that that competence is confined to the cases specified.

The Chairman:

Translation: I see that this question has not yet been thoroughly thrashed out.

M. Novakovitch (Yugoslavia):

Translation: I consider that the scope of Basis of Discussion No. 22 is restricted to the determination of the cases in which the coastal State may stop a vessel in innocent passage. It would be unwise to complicate the question, and, in discussing Basis No. 22, I think we should confine ourselves to the question of the stopping of the vessel.

The Chairman.

Translation: I think we are all agreed to confine ourselves to police matters, and to leave on one side the question of competence.

The Committee decided to refer the question to Sub-Committee No. 1.

The meeting rose at 1 p.m.

NINTH MEETING

Wednesday, March 26th, 1930, at 10 a.m.

Chairman: M. GÖPPERT.

17. BASIS OF DISCUSSION No. 22: REPORT OF SUB-COMMITTEE No. 1.

M. de Magalhães (Portugal), Chairman of the Sub-Committee:

Translation: During yesterday's discussion of Basis No. 22 and, in connection with the proposed exclusion of State-owned vessels, the Committee decided to refer to the Sub-Committee the question of the definition of vessels to which the said Basis is to apply, "with a request that it should again consider whether a reference to this question should or should not be made in the Convention".

The Sub-Committee, at its meeting yesterday, decided to propose to the Committee that a small Sub-Committee should be appointed to consider the advisability of inserting in the Convention a rule relating to State-owned vessels, and what form that rule should take. I should be glad if the Committee would agree to this proposal.

The Chairman:

Translation: The Sub-Committee's proposal seems to me a very practical one. I propose that we should appoint this Sub-Committee, and that it should consist of the delegates of Belgium, Great Britain, Denmark, Italy and the United States.

The above proposals were adopted.

18. BASIS OF DISCUSSION No. 23.

The Chairman :

Translation : We now come to Basis of Discussion No. 23.

Yesterday's discussion was dominated by the necessity of reconciling the interests of the coastal State and of navigation. We should, I think, bear this same consideration in mind — namely, the diversion of a ship from its course — in examining the question which we are to discuss to-day. We must consider whether this should be allowed in all cases or only in cases presenting a certain importance. I am drawing your attention to this point at the beginning of the discussion in order that it may be taken into account by speakers.

Viscount Mushakoji (Japan) :

Translation : According to No. 2 of the British proposal, an individual may be arrested " if the crime or offence in respect of which the arrest is to be made was committed within the jurisdiction of the coastal State elsewhere than on board the ship or within the jurisdiction of another State which has made a lawful demand upon the coastal State for the extradition of the offender ".

There are some States which punish crimes or offences committed in other countries. For instance, according to the Japanese Penal Code, certain acts are punishable even when they have been committed abroad. These are as follows :

(1) Crimes against the Imperial Family ;
(2) Crimes against the safety of the State ;
(3) High treason and espionage ;
(4) Counterfeiting currency ;
(5) Forgery of official documents ;
(6) Forgery of transferable securities ;
(7) Forgery of official seals and marks.

As the British amendment does not cover all these particular cases, we think it would be better to adopt the text of Basis of Discussion No. 23, which is of a more general nature and wider in scope.

Sir Maurice Gwyer (Great Britain) :

It seems to the British delegation that Basis No. 23 is not accurate as it stands, because, in the first place, it must clearly refer to crimes committed elsewhere than on board ship ; otherwise it is either inconsistent with Basis No. 22 or it adds nothing to it. The British delegation has therefore proposed an amendment limiting the right of the coastal State to arrest on board a passing ship any person who is charged with an offence committed within the jurisdiction of the coastal State elsewhere than on board the ship.

I think something of that kind is required, because the Committee will remember that it has now included among the ships which enjoy free passage those which have been in a port and which are leaving that port for the purpose of seeking the high seas. Offences may well be committed by members of a crew or passengers against the laws of the coastal State while the ship is in port. I think it is clearly necessary that the coastal State should have the right to arrest those persons, if it thinks fit, before the ship finally leaves its jurisdiction.

The point raised by the Japanese delegate is one, perhaps, which ought also to be dealt with. As I understand it, certain offences committed abroad by Japanese nationals can, under the law of his country, be prosecuted in Japan itself. A certain number of crimes in my own country can be prosecuted in England if committed by British subjects abroad ; for example, murder and treason, and, if I remember rightly, the offence of bigamy. Perhaps the coastal State ought to be allowed to have the right to arrest its nationals even on board a foreign ship, if they have committed offences for which they contrived in the jurisdiction of the coastal State.

In regard to the last three lines of the English amendment, which deals with the question of offenders in regard to whom a claim for extradition has been made, the British delegation submits the proposal for the consideration of the Committee, but is not particularly wedded to it. The Committee may consider that extradition should be left out of this Convention and dealt with in a special extradition treaty. This is a point to be borne in mind, and, so far as the British delegation is concerned, it will listen attentively to the observations (possibly the criticisms) of other delegates upon that proposal.

Viscount Mushakoji (Japan) :

Translation : I wish to explain that it is not only a question of certain crimes or offences committed by the nationals of the coastal State, but also of crimes or offences, such as counterfeiting currency, committed by foreigners.

Mr. Miller (United States of America) :

The delegation of the United States has proposed an amendment to Basis No. 23. I shall not refer to it particularly, but refer rather to the Basis itself and to the amendment proposed by the delegation of the United Kingdom which is now before us.

As the Chairman has well pointed out, this Basis refers to prior crimes, because, when we speak of crimes not committed on board a ship, they are crimes which have been previously committed, contrary to the law of the coastal State, within its territorial jurisdiction and whether or not committed by its nationals. In my view, this basis is much too large. In the words of the British text, it includes any kind of crime or offence. It would include a petty theft ; it would include, perhaps, false income tax returns. I cannot go through the whole list.

In view of the discussion which took place yesterday, when we agreed (as my friend

M. Giannini said) that stopping a ship was a matter for the police, it seems to me that the power of the police must be limited very largely to certain kinds of very grave crimes.

To take the other extreme, I suppose that we should all accept the view that, if it were alleged that a murder had been committed, the accused person could be taken off the ship : that, however, is a very different thing from extending the same power to every possible crime or offence. Furthermore, there are crimes that we should regard as being in the nature of political crimes. It is necessary, I think, to make a very serious restriction here.

Passing to a second point, we have now included, in the definition of innocent passage, to some extent at least, three different things : we have included the case of a ship passing through the territorial waters to enter a port, the case of a ship coming out of the port and passing through territorial waters, and the case of a ship which is merely going through the territorial waters, so to speak, along the coast. I wish to refer to two of these three cases. I have separated them, not as matters of law, but for convenience of discussion.

Let me take the case of a ship leaving a port ; let me take one of our own ports, with which I am more familiar. The police of the port of New York are informed that there is an escaping criminal, charged with any offence that you please, on board a ship which is leaving our harbour. The ship goes down through the interior waters and reaches the territorial zone. I think it would be the practice of any port authorities to stop that ship at any time before it has reached the outer limit of the territorial sea in order to take back to the port from which he had embarked the accused criminal.

It seems to me, in this case, that the practice, at least, is much broader than it would be if the ship were merely proceeding along the coast. We are including in this Basis, however, a rule that is applicable to both cases and which, if it conforms with the practice, must be one of two things — either it must be a wide rule to cover what I will call the port case (a criminal escaping from the port and going down into the territorial waters) or else it must be, what I think everyone would agree upon, the narrow rule for the ship which was merely passing along the coast. I think this creates a real difficulty in connection with this Basis, a difficulty which we must meet. We must find some way of reconciling what I submit are at present the two rules of practice of coastal States in general, throughout, I think, the whole world.

As regards my third point, if I may refer to the observation of the delegate for Japan, it seems to me that the question of what I may call the locus of the crime could be covered under the first point I have made as to the character of the crime ; that is to say, particularly in the case of the ship passing along the coast and not coming from a port. If we establish a certain classification of very grave crimes, it seems to me that it might well include the question raised by the delegate for Japan.

I have only one more point to raise, and that relates to the three last lines of the British amendment, regarding extradition. I suggest that we should leave the question of extradition to be dealt with in extradition Conventions, and that we should not go to the length of saying that the ship could be stopped while passing along the coast in order to satisfy a request (or to use the word of the amendment " demand ") for extradition. The matter should, it seems to me, be left until the person has reached some port at which the ship will call, when extradition can be effected in accordance with the extradition Conventions of which there is such a large number.

M. de Armenteros (Cuba) :

Translation : I regret that I am not in agreement with the Rapporteur to the Preparatory Committee as regards Basis of Discussion No. 23. Contrary to the replies to the questionnaire relating to this Basis and to the amendments submitted, I do not think it either useful or practical to mention expressly the right of the coastal State to arrest a person who is on board a privately owned foreign vessel which is in transit. If the powers of the coastal State are enumerated, this means that powers not enumerated are excluded. We ought to take a diametrically opposite view and specify the cases in which the coastal State is debarred from acting and in which it cannot exercise its powers.

Except when we are dealing with vessels in the public service of a foreign country, the general rule is that the coastal State has jurisdiction. What we have to define in a Convention of this nature are the few cases in which the local authority can take no action.

For these reasons, I cannot accept the wording of Basis of Discussion No. 23, and would ask either that it should be omitted or should be referred with the amendments to the Sub-Committee to be more clearly drafted, the principle of sovereignty being maintained and the cases in which the State cannot arrest an offender being specified.

M. Meitani (Roumania) :

Translation : The terms of Basis of Discussion No. 23 are much more general than the amendment submitted by the British delegation. That amendment, after adopting in part the provisions of Basis No. 22, goes on to specify two other cases in which the coastal authority is competent to arrest and bring to justice individuals who have committed offences or crimes on board merchant ships.

No. 2 of the British amendment provides that the offender may be arrested if the crime or offence was committed within the jurisdiction of the coastal State elsewhere than on board the ship, or within the jurisdiction of another State which has demanded the extradition of the offender.

These provisions are of a much more limitative nature than the text of the Basis of Discussion, and the Japanese delegate was right in stating that there are certain acts, offences or crimes punished by his national law (and I might add by the law of other countries also, including the Roumanian Penal Code) in respect of which the coastal authorities could not arrest the offender — for instance, if he had been guilty of counterfeiting currency or a crime against the safety of the State. That is one of the difficulties inherent in the limitative provisions contained in an amendment which has been submitted to Basis of Discussion No. 23. If a general principle is laid down, as in Basis No. 23, the cases mentioned by the Japanese delegate will be covered. That is why I prefer the general provisions of Basis No. 23.

Moreover, as Mr. Miller rightly remarked, there are some situations which are generally regulated by Basis No. 23. At the same time, we must make a distinction between acts committed or persons to be arrested on board vessels entering or leaving ports and acts committed or persons to be arrested on board vessels which are merely passing through territorial waters.

This is a very delicate question, but it could quite well be examined by the Sub-Committee. The cases I have specially in mind are political crimes and offences. Is it possible to arrest a criminal or offender who is on board a vessel which is merely passing through the territorial waters of the State? I am quite aware that this arrest is authorised in practice in the case of crimes against the safety of the State or against the State's right of self-preservation. Nevertheless, it is, I repeat, a delicate question ; and, if the full Committee is not prepared to examine it, I think that at all events we ought to refer it to the Sub-Committee.

M. Sitensky (Czechoslovakia) :

Translation : I should like to make two observations on Basis of Discussion No. 23, one in regard to the substance and the other the form.

As regards substance, the rule laid down in the Basis under review is too broad and general. I would prefer an exhaustive enumeration of the cases in which a person whose arrest is sought may be arrested on board ship.

As regards form, I consider that this rule should not appear in a special article, but should form paragraph 2 of Basis No. 22.

We have opened our Convention by enunciating the principle of the sovereignty of the coastal State. We should then enumerate the cases in which this sovereignty is restricted or no longer operates.

In the circumstances, we are no longer dealing with a restriction of sovereignty but with an application —

M. Giannini (Italy) :

Translation : A confirmation.

M. Sitensky (Czechoslovakia) :

Translation : — of the principle of sovereignty, of a rule which had to be inserted only as a result of the rule mentioned in the previous Basis No. 22, and which should accordingly merely be a second paragraph of that Basis.

Dr. Schücking (Germany) :

Translation : The German delegation prefers the British amendment to the text proposed in the Basis, because that amendment avoids some ambiguities which might arise in regard to the provisions of Basis No. 23. In particular, it lays down that an individual can only be arrested in criminal cases. In the Basis proposed to us, the word " criminal " does not appear. It is, however, a very important point.

Personally, I think we should even go further than the British amendment.

The possibility of arrest in cases where the offence was not committed in territorial waters must be restricted to serious offences.

Should we not also take into account the requirements of navigation? The arrest of the master or pilot of a small vessel passing through territorial waters ought not to be allowed, as the safety of the vessel would be endangered and it might even be compelled to interrupt its voyage.

I am doubtful as to how the right of a coastal State to stop a vessel passing through its territorial waters for the purpose of executing an extradition order could be established.

Finally, I think that the Sub-Committee should study the important point raised just now by the delegate for Japan.

M. Giannini (Italy) :

Translation : Gentlemen — From a strictly logical point of view, Basis No. 23 appears to be altogether superfluous.

Does not Basis No. 22 provide that, in the particular cases covered by that Basis, the requirements of navigation have priority over the jurisdiction of the State?

Basis No. 23 provides that, in the cases covered by that Basis, the general rule is to be applied.

From a logical point of view, Basis No. 23 appears to be quite unnecessary.

Did we not recognise, in Basis No. 22, that, in view of the requirements of maritime navigation and of the co-operation of States in criminal matters, there are some cases in which competence is of no importance? The requirements of maritime navigation outweigh the problem of the competent jurisdiction. I think we are all agreed on that point.

According to the text of Basis No. 23, the requirements of justice are, in certain cases, to take precedence over the requirements of maritime navigation.

As I said just now, this Basis is merely an application of the general principle laid down in Basis No. 1. What purpose, then, does it serve?

It might perhaps be possible to add a provision to Basis No. 22. As our Czechoslovak colleague has just remarked, this rule should not appear as a separate article. If the Committee considers it advisable, the rule can be added to Basis No. 22.

I should now like to ask my colleagues to consider very carefully the fact that if we are going to touch upon penal codification or extradition Conventions, we shall get on to dangerous ground and shall find it very hard to reach agreement. The reason is that we should have to consider special cases resulting from the different criminal laws in force in various countries. What are the offences in question?

First, we have offences directed against mankind at large. Crimes such as piracy, traffic in women and children and counterfeiting currency must be prosecuted wherever they occur and the offender must be arrested. I think we can all agree to this as we are all signatories of general Conventions.

Then there are crimes which a given State may insist upon punishing wherever they have been committed. The only distinction is in regard to the definition of categories — the fundamental principle remains the same.

A State may declare that, for reasons of self-defence, it will prosecute an offender wherever he may be. If he is in its territorial waters he will be seized. In view of the special importance of the right of self-defence, we cannot refuse to recognise that right, which is indisputable.

There are other offences in regard to which a certain distinction is made by States. One State will decide to prosecute if the offence was committed in its territory, but not if it was committed outside, unless the effects of the offence extend to its territory. These are some of the particular cases with which we might be faced.

It would thus be extremely difficult to lay down a general rule capable of solving all these problems.

There remains the general problem of an offence committed in the territory and which the State desires to punish for general reasons if the offender is on board a vessel passing through its territorial waters.

It is only possible to solve all these problems by means of a general rule if that rule is sufficiently wide to avoid the necessity for going into details.

If we do go into details, we shall be faced with a whole series of navigation problems.

With regard to this matter, I agree with my colleague who proposed that these problems should be left on one side, because otherwise it would be difficult, if not impossible, to find a solution. There are so many special extradition Conventions, some old and some new, and so many special cases that I hesitate even to look into them.

What, then, are the reasons why we cannot accept Basis of Discussion No. 23? Let us state them frankly.

The British amendment stipulates that the crime shall have been committed elsewhere than on board the vessel. I would point out, however, that the other British amendments are covered by the general rule. For instance, the words, " if the crime or offence in respect of which such arrest is to be made was committed on board the ship within the national or territorial waters of the coastal State ", refer to a case provided for in the Basis. The words, " which has made a lawful demand upon the coastal State for the extradition of the offender ", also relate to cases provided for in the text drawn up by the experts, since Basis of Discussion No. 23 starts as follows: " A person whose arrest is sought by the judicial authorities of the coastal State . . . "

Another consideration has arisen, namely, interference with navigation for the purpose of arresting an offender who has been guilty of a petty theft. From the point of view of criminal law, a State would have the right to arrest an offender who had stolen 15 or 20 lire. It is, of course, hardly likely that such a case would occur in practice. A rule which cannot be codified is the rule of good faith. That is a virtue which everyone should possess and which should be found in all civilised countries. It is obvious that, when a Convention is to be concluded, it is taken for granted that it will be applied in all good faith. A State which, after accepting Basis No. 22, interferes with navigation on account of some petty offence can hardly be said to be acting in good faith.

I should now like to say a few words with regard to the amendment submitted by the Danish delegation. It proposes to add " in order to raise criminal prosecution " after the words " the coastal State ". Basis of Discussion No. 23 starts with the words, " A person whose arrest is sought by the judicial authorities of the coastal State . . . ", which have the same meaning.

As regards the United States amendment, this seems to me to be merely a different way of formulating the Basis of Discussion without adding anything to the original text.

In these circumstances, I think the only problem we have to solve is in regard to the combination of Bases Nos. 22 and 23, which might be referred to the Drafting Committee. If we are able to combine Basis No. 22 with Basis No. 23, I think we should reject the British proposal, which would raise much more difficult problems.

I would therefore ask the Committee to accept Basis No. 23 and to refer it to the Drafting Committee to be drawn up in such a way as in no wise to diminish the importance

of Basis No. 22. This would, I think, be satisfactory to the British delegation.

Viscount Mushakoji (Japan) :

Translation : The Japanese delegation is still in favour of the maintenance of Basis No. 23. However, according to the principle laid down in that Basis, the coastal State would have what amounts to an absolute right to arrest on board a foreign merchant ship in its territorial waters any person whose arrest was sought by the judicial authorities of that State, even if the offence committed was of minor importance. With a view to avoiding such a consequence — which cannot have been the intention of the authors of the draft — and of assuring, as far as is possible and reasonable, the free passage of vessels through territorial waters, the application of the rule should be restricted to cases in which the arrest of an individual is sought on the charge of a grave offence against criminal law. In this connection, I share the views of the Danish and United States delegations.

I therefore propose that, after the words " by the judicial authorities of the coastal State ", the following words should be added : " for a grave offence against criminal law ".

The Chairman :

Translation : The Japanese proposal might perhaps serve as a compromise draft.

M. de Ruelle (Belgium) :

Translation : This is another of those problems the general solution of which can, I think, be clearly perceived. It is when we come to the details that the difficulties begin. This case resembles others which we have already discussed, in that it would be unwise to attempt too much.

Nevertheless, the discussion has already indicated the direction in which a general solution of the problem should be sought. For instance, I was very much struck by what Dr. Schücking said just now about the importance of not diverting a ship from its course. As the Chairman very truly remarked in opening the meeting, we must endeavour to reconcile the interests of the coastal State with the interests of navigation. We must remember that modern merchant ships and liners carry cargoes of great value and passengers whose voyage cannot arbitrarily be delayed to enable the coastal State to carry out penal proceedings in cases of trifling importance.

I think the best solution would be to accept the principle that commercial vessels — I am leaving out of account small fishing boats and pleasure or similar boats — ought not to be diverted from their course merely for the purpose of arresting an individual on board.

If a coastal State desires to effect an arrest, it is bound to seize the person on board without delaying the voyage of the vessel. If this principle is accepted, the question of the degree of gravity of the offence which it is desired to punish would be of little importance. If the coastal State is to be allowed to stop the vessel for the purpose of arresting an individual or merely for ascertaining his identity, it must have the necessary means of transport to do so as quickly as possible and without diverting the ship from its course.

If, however, we endeavoured to enumerate the crimes or offences committed elsewhere than in territorial waters and which the coastal State might desire to prosecute, we should have to go into details which lie outside the scope of this Conference. We could, of course, say that offences in respect of which arrest may be effected, as provided for in Basis No. 23, are, in general, those indicated in the extradition Conventions concluded by the State concerned, but that would be a very vague formula, because extradition treatics, while presenting certain analogies, differ from each other. In any case, this expedient would merely serve to determine and qualify acts in respect of which arrest can be effected.

Moreover, extradition Conventions, and in particular those concluded between the prosecuting State and the State to which the offender belongs, would not solve all the difficulties, because these Conventions are intended to meet other situations, and the extradition of nationals is frequently excluded. We should therefore have to go into further details. For that reason, I think it would be better to keep to the general formula in Basis No. 23, with the possible addition proposed by the Japanese delegation. In my view, however, the main guarantee required by shipping is the assurance that a vessel cannot be diverted from its course. Basis of Discussion No. 23 should therefore be supplemented by a provision to this effect.

M. Raestad (Norway) :

Translation : I desire, first of all, to refer to the United States delegate's observation. Mr. Miller emphasised the difference between a vessel which is merely passing through territorial waters and one which is leaving a port. There is a very great difference between these two cases. We may quite conceivably limit the coastal State's right in regard to vessels passing through its waters, but we could not possibly limit that right to the same extent in the case of vessels leaving one of its ports.

The point raised by Mr. Miller is, I think, covered by the notion of pursuit, which occurs in Basis No. 26 and which must be widened in scope. As already pointed out, the coastal State must have the right of pursuit if there is a criminal on board a vessel leaving a port in which it has been staying, even if his offence

is only a trifling one. This question of vessels leaving a port, however, must not delay us in the work on which we are engaged at the present moment.

I should now like to say a few words on the British amendment regarding the coastal State's power to arrest a criminal whose extradition has been applied for by another State. I agree with those speakers who urged that this question of extradition should be set aside. My reasons in taking this view are these.

In extradition treaties, the contracting States undertake to deliver up a criminal at the request of the other party, but this obligation cannot be complied with unless the criminal is on *terra firma* and, so to speak, in the hands of the authorities. The British proposal does not widen this obligation ; it simply gives the coastal State powers in the matter, though I think that such powers could not become operative under the extradition system.

As regards the crux of our difficulties, the draft seems to me very complex. M. Giannini has pointed out that, in criminal affairs, countries co-operate with each other to a certain extent. That suggests to me the following reflection : although a criminal may not happen to be arrested on board a vessel passing through territorial waters, that in no way means that he will not be arrested at all. It simply means that his arrest is being deferred until the vessel enters port. Moreover, with the means now available, it is always easy to get into communication with a vessel.

In this matter, it seems to me — and I agree on this point with many previous speakers — that the main preoccupation is to consider the requirements of navigation and not cause any hindrance to it beyond what is strictly necessary. I do not suggest that the dignity of the coastal State should be in any way impaired, but it is really hardly practical to delay a vessel in order to make an arrest if it is known that the vessel will enter port a few hours later.

It is difficult to find a formula. As regards form, I agree with the British amendment : it would be better to amalgamate Bases Nos. 22 and 23. As regards the substance of the question, the Sub-Committee must be allowed a wider discretion than usual. The material at its disposal is very considerable, and the aim of my proposal is therefore that it should be given wider freedom to examine the point now before us.

Abd el Hamid Badaoui Pasha (Egypt) :

Translation : It has been remarked that the scope of Basis No. 23 is too wide. I would go further and say that there is a certain contradiction between Bases Nos. 22 and 23.

When Basis of Discussion No. 22 was drawn up, the cases in which the action of a coastal State could extend to a vessel in innocent passage were determined, and care was taken to restrict those cases to reasons of primary importance. According to Basis of Discussion No. 23, however, it appears to be sufficient for a crime to have been committed in the past for the action of the coastal State to extend without any limitation to a vessel in innocent passage. It is obvious that, in drawing up Basis No. 23, no regard was paid to the considerations which govern Basis No. 22. Basis No. 23, as at present worded, would enable a national or a foreigner to be arrested for any offence committed within the coastal State, or even outside it, in cases to which the jurisdiction of the coastal State extends.

Before considering the limits within which Basis No. 23 might possibly be accepted, we ought to examine the various cases in which this Basis can be applied. Basis No. 23 appears to refer to the case of ships in innocent passage. But what is the correct definition of innocent passage? According to the British definition, only ships passing through territorial waters can be regarded as in innocent passage, vessels entering or leaving a port being excluded.

In my opinion, it is unnecessary to consider the position of a vessel entering a port. What really matters is the position of the vessel in port, since the rights possessed by the coastal State in regard to vessels in port are bound to be as great as, if not greater than, the rights in respect of vessels in passage. As regards vessels leaving a port, that is a special case in which the rights of the coastal State may be much more extensive than in the case of vessels in passage, because the fact that a vessel has anchored in a port, has had contact with the shore, has taken on board passengers, etc., increases the power of the State to arrest a criminal who has escaped and is on board the vessel in question.

The situation is substantially different if the vessel is passing through territorial waters without touching the coast. I am inclined to think that the same considerations which led us to confine the exceptions indicated in Basis of Discussion No. 22 to a very small number of cases might help us to find a criterion to determine the cases in which a coastal State can arrest an individual on board a vessel in passage.

The Japanese delegation suggested a very interesting criterion, namely, that the offence should be of special gravity ; it seems to me, however, that this is a far wider criterion than that adopted in Basis No. 22. In my view, the only possible criterion, having due regard for the interests of navigation, which take precedence over all others in this matter, is that of the internal or external security of the State ; or, if a comparatively wider criterion is desired, cases in which the jurisdiction of a State would enable it to arrest one of its own nationals or a foreigner who had committed an offence outside its

territory. Either of these criteria would safeguard the interests of navigation and would prevent a vessel from being stopped except in cases of special importance.

I now come to extradition. It seems to me that, if we accept the possibility of a voyage being interrupted for the purpose of arresting a person who is to be extradited, the same objections apply *a fortiori*. If it is unreasonable to authorise the coastal State in every case to stop a vessel in passage in order to arrest an individual on its own behalf, it is even more unreasonable to allow it to do so on behalf of another State. The question of extradition should, therefore, be subject to the same limitations and restrictions as the right of the State acting for its own account.

With regard to extradition, I should also like to know whether the proposed amendment refers to an interpretation of existing Conventions or authorises the establishment of special provisions in future by means of bilateral treaties, in accordance with which a State might have the right to stop a vessel in passage.

If the amendment refers to the interpretation of existing Conventions, I should have the same objection to make as in regard to Basis No. 23. If it refers to an authorisation in accordance with which certain States might agree in future to grant each other the right to stop a vessel in innocent passage for the purpose of arresting a criminal, it seems to me that an authorisation of this kind is superfluous. States concluding bilateral agreements are always free to make such stipulations. There should not, however, be a general rule resulting from an international Convention and authorising any State, independently of any special extradition Convention, arbitrarily to restrict the innocent passage of vessels belonging to other States. Moreover, the right to which I have just referred would exist whether extradition were mentioned, as proposed in the amendment to the present Basis of Discussion, or not.

This right is possessed by every State. If a State is willing to restrict *vis-à-vis* another State the right of passage of its own vessels in return for a reciprocal restriction on the part of the other State, there is no reason why it should not do so.

The fact that two States conclude or do not conclude a bilateral Convention of this kind is of no importance to third States. The conclusion is, therefore, that Basis No. 23 is not acceptable in its present wording. My objections refer, not merely to the form but to the substance of this Basis, which should be governed by the same considerations as Basis No. 22. As regards the question of extradition, we can leave to States — which will in any case have this right whether it is expressly mentioned or not — the possibility of restricting as between themselves the right of passage of their own vessels through the territorial waters of other States by means of bilateral extradition Conventions.

M. Sjöborg (Sweden) :

Translation : As regards the arrest, on board vessels passing through territorial waters, of persons who have committed crimes or offences elsewhere than on board, the Japanese delegation proposes to restrict the right of the coastal State to grave offences. I do not think that we can accept a restriction of this kind.

The reason for providing that the right of the coastal State to arrest individuals for crimes committed on board a vessel should be restricted as far as possible is that the effects of crimes or offences committed on board a vessel do not extend beyond the small area of the vessel itself, and, therefore, cannot affect the interests of the country. If, however, the consequences of an offence extend beyond the vessel, the State must retain its right to effect an arrest. This right was recognised in Basis No. 22 and covers all offences, whether they are of a serious nature or not.

If, then, we recognise the State's right to take this action in all cases without exception merely when the consequences of an offence extend beyond the ship, the same rights should be granted *a fortiori* and without any exeeption in cases where the offence was eommitted outside the vessel. Otherwise, our formulas would be inconsistent.

I should now like to make an observation in regard to what M. de Ruelle has just said. I fully agree with him that, while maintaining the right of the coastal State to effect an arrest in the above-mentioned cases, we must endeavour to find a formula which will prevent that State from interfering with the legitimate interests of innocent passage. When effecting these arrests, the State should not have the right to divert the vessel from its course or to interrupt the voyage for longer than is absolutely necessary.

That is an essential stipulation. A formula will have to be found, but that is merely a question of drafting.

The British amendment proposes that, in the case of offences committed abroad, a lawful demand for extradition must be made ; it thus restricts the rights of the coastal State in the matter. I think we are nearly all agreed that this restriction should not be allowed. A great many States have laid down the principle, in regard to offences committed abroad, that their courts shall in certain cases possess jurisdiction, whether the offenders are their own nationals or foreigners.

We can hardly accept the principle that a requisition for extradition must be made before a State can arrest one of its own subjects who is on a vessel passing through its territorial waters. Moreover, I would point out that certain countries cannot, under their law, surrender their nationals to a foreign country.

In such cases, they refuse to accede to requisitions for extradition.

For all these reasons, the restriction proposed by the British delegation is unacceptable.

In conclusion, I agree with the delegates for Czechoslovakia and Italy that Bases of Discussion Nos. 22 and 23 should be combined, since Basis No. 23 merely amounts to an application of the general principle laid down at the beginning of our Convention, namely, the sovereignty of the State. I think all this is merely a matter of drafting, which can confidently be left to the Sub-Committee appointed to deal with the question.

19. — ORGANISATION OF THE WORK OF THE COMMITTEE: PROPOSALS BY THE ITALIAN DELEGATION.

M. Giannini (Italy):

Translation: I should like to raise three points of order.

We are all somewhat concerned as to the progress of our work. We have already examined several questions, but the end is not yet in sight.

After the various questions have been examined by the Sub-Committee, they must again come before the full Committee. Then they have to be referred to the Drafting Committee. After that they will be re-examined by the full Committee. Finally, they go to the General Drafting Committee.

If we go on at our present rate, it will, I think, be impossible for us to finish by the proposed date.

We must find some means of getting out of this deadlock. Though our discussions are certainly very interesting, they are somewhat slow. To-day, for instance, we discussed at length a theoretical question of very little practical importance.

I think that the chief thing which has emerged from the present discussion is the necessity of finding a formula which will reconcile the interests involved.

As an example, I will take the Italian mercantile marine, with which I am familiar. If, for any reason, an Italian transatlantic liner is delayed for an hour, the cost is something like 300,000 lire. This is a very considerable sum. How, then, are these interests to be reconciled with the interests of the criminal jurisdiction of the coastal State?

You see how difficult it is, in a large Committee, to find a definite formula, although we all, I think, agree in principle; no one denies the importance of the State's jurisdiction or of the requirements of shipping. Nevertheless, we have not yet found a formula.

If you bear in mind the fact that similar questions of a technical nature and of conflicting interests may arise in connection with the discussion of Bases Nos. 24, 27, 28 and 26, the full Committee will probably still be sitting next Monday, and after that the problems will have to be finally referred to a Sub-Committee for it to find a formula.

I accordingly propose that a second Sub-Committee should be appointed at once. This Sub-Committee would not have the same powers as Sub-Committee No. 1, but would deal with all these questions of formulas and would endeavour to find a wording satisfactory to everybody.

There remains the chief problem of the Convention, which has been discussed at length, but in regard to which no definite agreement has been reached, namely, the breadth of the territorial sea and the situations arising therefrom.

Let us therefore appoint this second Sub-Committee, which will be able to work all the more quickly because it will not need any Minutes.

I now come to my second point. I propose that we should leave on one side all problems the technical aspects of which are of chief importance and which are contained in Bases 7 to 18. These might be dealt with by the Committee of Technical Experts, in order to save time.

This Committee of Technical Experts, like our Sub-Committees, could carry out the preliminary work, and we could then submit any observations in regard to the legal or political aspect of the problem which we desired to make.

In any case, if the two Sub-Committees and the Committee of Experts got to work, I think they could submit definite conclusions to the Committee as the result of their preparatory work, and it should then be possible to finish by April 10th or 11th.

I should like to tell you frankly that, if we are to continue our discussions with such full Minutes, it will be very difficult to arrive at any conclusions.

My motions may thus be summarised as follows:

The Committee of Experts should meet as soon as possible to examine Bases 7 to 18.

Sub-Committee No. 1 should then be instructed to find a formula for questions in regard to which agreement in substance has already been reached.

A second Sub-Committee should be appointed to examine questions of substance in regard to Bases Nos. 23, 24, 27, 28 and 26.

With the work of these three Sub-Committees before it, the full Committee could get on more quickly.

There is one more point I should like to raise. At a meeting which took place in June of last year, we examined the requests submitted by certain States which had taken part in a Conference dealing with the universal application of maritime navigation Conventions. The point at issue was that of straits. We had agreed to a formula which was also accepted by Air Vice-Marshal Sir Sefton Brancker, the British delegate and by the German delegate.

The British delegate said, however, that, in view of the fact that a Conference on the Codification of International Law was to be held shortly, the task of finding a definitive solution could be referred to it. This question

is on the agenda. I think, however, that it should first be discussed by experts.

I have merely desired to draw the Committee's attention to the further delay which is likely to be caused by this problem, a problem of great international importance, since it concerns the universal application of maritime navigation Conventions.

The Chairman :

Translation : I am grateful to M. Giannini for reminding us that time presses. He has proposed an entirely new programme. Various considerations have to be borne in mind, more especially material considerations ; for instance, there is the question of the staff which will be required for the Sub-Committees. Moreover, the meetings cannot be held at the same time, because it must be possible for delegations to participate in the work of more than one Sub-Committee. I propose, therefore, that we should think over the whole matter, and I will ask the Committee for its decision at the beginning of our meeting to-morrow.

I also propose that Basis No. 23 should be referred to Sub-Committee No. 1, whose terms of reference should be extended for the purpose, as suggested by M. Raestad.

The Chairman's proposals were adopted.

M. Sitensky (Czechoslovakia) :

Translation : I think we could simplify M. Giannini's proposal by extending the powers of the first Sub-Committee instead of creating a new Sub-Committee. The matters referred to the two Sub-Committees are very much alike, and it does not seem advisable that the same, or practically the same, work should be done by two Sub-Committees consisting of different members. This would be anything but a simplification of our proceedings.

The Chairman :

Translation : In order to avoid a lengthy discussion on this point of order to-morrow, I propose that the various delegations should endeavour to reach agreement in private conversations, so that the Committee may only have to confirm that agreement to-morrow.

The meeting rose at 12.30 p.m.

TENTH MEETING

Thursday, March 27th, 1930, at 10 a.m.

Chairman : M. GÖPPERT.

20. ORGANISATION OF THE WORK OF THE COMMITTEE (Continuation).

After discussion, the Italian delegation's proposals were withdrawn, and *the Committee adopted the following proposals by the Chairman regarding the organisation of the Committee's work :*

Reference of Basis of Discussion No. 24 to the Sub-Committee.

Discussion in plenary meeting as to whether the Bases relating to the regime of foreign ships in ports should be omitted.

Examination of Basis of Discussion No. 20.

Discussion of the Basis relating to the continuation on the high seas of pursuit begun in territorial waters.

The Sub-Committee will be asked to give its opinion on the meaning of the words " low-water mark " in Basis No. 6, and on Bases Nos. 7, 9, 10 and 11, and also to give a definition of an island (Bases Nos. 12, 13 and 14), and an opinion on Basis No. 18.

The Committee will discuss Bases Nos. 15, 16 and 17.

The Chairman :

Translation : The proposals we have just accepted are very similar to those of the Italian delegation, to whom we accord our sincere thanks for the figures it has given us.

21. BASES OF DISCUSSION Nos. 27 AND 28.

The Chairman :

Translation : There are three proposals to the effect that these Bases should be omitted. This really amounts to a continuation of the discussion on procedure. I therefore recommend that you should be very brief and should not allow the discussion to last beyond a quarter of an hour.

Mr. Miller (United States of America) :

Various delegations have made the suggestion that Bases Nos. 27 and 28 should be omitted. The delegation of the United States is among those which have made that proposal. I suggest, in support of it, that the question of ships in ports is a very large one. It is by no means completely covered by the two

Bases in our printed document. Further, it is the subject of very many special Conventions concluded between the States which are represented here, and I call attention to the fact that, in the Brown Book (document C.74. M.39.1929.V), the question is raised whether or not it is desirable that the point should be dealt with in the Convention on Territorial Waters.

It seems to me that it is unnecessary to deal with this question, that it would prolong our discussions, and that the omission of the subject of ports would not at all prevent the drafting of a Convention on Territorial Waters. From the point of view of terminating our proceedings, I submit that the wise course is to suppress Bases of Discussion Nos. 27 and 28.

M. Makowski (Poland):

Translation: I fully agree with the reasons adduced by the United States delegate, and should like to add the following considerations:

The Council of the League has instructed us to draw up the legal statute of territorial waters. We all agree that territorial waters — in other words, the belt of sea separating inland waters and ports from the high sea — should be given a special definition which must not include the ports themselves.

It would therefore be logical to omit these two Bases of Discussion, particularly because the international regime of maritime ports was the subject of the Convention and Statute signed at Geneva on December 9th, 1923.

If we retain Bases of Discussion Nos. 27 and 28, we should, to a certain extent, be encroaching upon the field of work of the Communications and Transit Conferences by adding provisions relating to ports.

I therefore maintain my amendment proposing the entire omission of Bases of Discussion Nos. 27 and 28.

Dr. Schücking (Germany):

Translation: I fully share the view expressed by the delegates of the United States and Poland. It is not our work to draft regulations governing the legal status of foreign ships in ports.

The Institut de droit international has drawn up regulations on which M. Gidel has written an admirable report. These regulations comprise forty-six articles, a fact which in itself is an indication of the complex nature of the question.

Sir Maurice Gwyer (Great Britain):

The British delegation would have preferred to have these Bases discussed, and, if possible, included in the Convention we hope to sign, because it thinks that, although in one sense they are outside the scope of a Convention on Territorial Waters, yet they are so intimately connected with certain aspects of the subject of our discussions that it would be useful to include them. On the other hand, there is the question of time, and it is certainly not desirable to run any risks. In those circumstances, while my delegation does not support with any great cordiality the proposal of Mr. Miller, it does not dissent from it.

M. Gidel (France):

Translation: The French delegation fully agrees with the view that has just been expressed by the British delegate. We should have preferred the question to be included in the regulations in question, where it ought to be placed. Although a text exists dealing with the statute of maritime ports, it is concerned with questions of communications and transit rather than with purely legal questions, such as that raised by our Basis of Discussion.

Nevertheless, the French delegation does not object to the adoption of Mr. Miller's proposal that, in order to save time, Bases Nos. 27 and 28 should not be discussed, the questions of principle being reserved.

M. Giannini (Italy):

Translation: I cannot say that I am prepared to agree to the omission of the two provisions under discussion simply for the sake of saving time. They must not be killed on the pretext of expediting our work.

I think that the title of the two Bases of Discussion Nos. 27 and 28 is wrong, as there is no question here of regulating the status of "foreign ships in ports".

The two rules laid down by the Committee of Experts are intended — very logically — to develop certain principles which are embodied in the Convention, namely, the criminal jurisdiction of the State in ports. We thus still remain within the scope of the Convention.

Accordingly, I quite agree with my British colleague that we cannot say that these rules have no connection with the Convention.

There is another point. The Committee's attention has been drawn to the Geneva Convention regarding ports. That Convention has nothing to do with our discussion, since it deals with a totally different problem.

The rules laid down in Basis No. 27 really represent no more than one aspect of the general principle on which progressive codification is largely based. The questions referred to in Bases Nos. 27 and 28 are to be found in all consular and navigation Conventions, and in others too. Bilateral Conventions have been concluded dealing with them, and from these Conventions the general rules may be deduced.

As, however, there is no urgent need to settle these problems now, and as they would have to be examined with care in order to see whether improvements can be brought about in regard to them, I agree that we should not continue the discussion of Bases Nos. 27 and 28.

Further, if we embodied these rules in the Convention, we should still have to introduce after them a clause reserving existing inter-State bilateral Conventions.

M. Meitani (Roumania):

Translation: I ask to speak on a point of order. The Committee has before it, on the one

hand, proposals relating to Bases of Discussion Nos. 27 and 28 and, on the other, a proposal by the United States and Polish delegations that these Bases should be omitted. According to Article XVIII of the Conference's Rules of Procedure, any request for the omission of a Basis must be put to the vote.

M. de Magalhães (Portugal) :

Translation : As certain delegations are agreeing to the omission of Bases Nos. 27 and 28 only in order to save time, I propose — although I support the view of those delegations — that we should decide to omit these Bases provisionally, and take up the discussion of them again, if we have time, at the end of our work. We can then, of course, omit them altogether if we choose.

The Chairman :

Translation : I think that, in accordance with M. Meitani's proposal, we should take a vote on the question of definitive omission. If the Committee decides not to omit these Bases, I will then put to the vote the question of their provisional omission.

M. Giannini (Italy) :

Translation : I am in favour of omitting them, but I think we shall have to give some reason for doing so. We must therefore agree as to the reason for omitting them. I think we might say that we regard the problem as forming part of the agreement, but that, as it does not urgently need to be solved and as regulations regarding it already exist in a large number of bilateral Conventions, the Committee has decided to reserve it.

M. de Ruelle (Belgium) :

Translation : As M. Giannini has just remarked, there must be no misunderstanding regarding the vote which we are about to take. The question of foreign ships in ports is one that very closely concerns us. As, however, we cannot hope to work out a full and detailed settlement for it, we might suggest that the Conference recommends that the Communications and Transit Section of the League of Nations should study the question. That Section has already dealt with certain aspects of the problem. I therefore propose that you submit to the Conference the following recommendation :

> " The Conference recommends that the Convention on the International Regime of Maritime Ports, signed at Geneva on December 9th, 1923, should be supplemented by the adoption of provisions regulating the scope of the judicial powers of States with regard to vessels in their inland waters."

The Chairman :

Translation : I propose that the Committee should first of all vote on the question of omitting these Bases and should then consider the question of the recommendation.

M. Meitani (Roumania) :

Translation : In my opinion this recommendation should be referred to the Sub-Committee.

Mr. Miller (United States of America) :

A third point has just been mentioned, namely, the question of the report. I do not wish to press the point now, but I wish to say something later about the question of the report.

The Chairman :

Translation : I put to the vote the question whether the Committee decides upon the definitive omission of the provisions regarding foreign vessels in ports.

The Committee decided by fifteen votes to twelve in favour of the definitive omission of Bases of Discussion Nos. 27 and 28.

The Chairman:

Translation : We have still to consider the question of the report and that of the recommendation. I propose that we begin with the recommendation.

M. Rolin (Belgium) :

Translation : The recommendation does not exclude mention of the question in the report.

M. Gidel (France) :

Translation : I should like to speak on a point of order. Some of us may, perhaps, have not quite understood the manner in which the vote was taken. We have more than one question before us : there is that of the complete and definitive omission of Bases Nos. 27 and 28 and the proposal of our Portuguese colleague that these Bases should be omitted provisionally.

M. Giannini (Italy) :

Translation : This last proposal has now been dropped, since the Committee has decided in favour of definitive omission.

M. Gidel (France) :

Translation : I am in point of fact raising the question whether there was not some misunderstanding when the vote was taken. Three questions arose : definitive omission, provisional omission, and mention in the report, which last is consistent with either of the other two procedures. These were the three points that came to light through the preliminary discussion. What has happened? Some of us did not vote for definitive omission, thinking that the question of provisional omission would be put to the vote ; when the votes were counted I noticed that some delegates who were in favour of provisional omission did not raise their hands. There may perhaps have been some uncertainty as to what was intended.

M. Meitani (Roumania) :

Translation : I should like to point out to the Committee that the question was very

clearly put by the Chairman, who said " definitive omission ".

Sir Maurice Gwyer (Great Britain) :

I wish to raise a point of order. Is not a vote to be taken first on the question of definitive omission, and then on that of provisonal omission?

M. Giannini (Italy) :

Translation : Let us first take a vote on provisional omission.

The Chairman :

Translation : I propose that we accept Sir Maurice Gwyer's suggestion to vote first on definitive omission and then on provisional omission.

M. Meitani (Roumania) :

Translation : I should like to point out that Article XVIII of the Rules of Procedure is quite clear. It makes no distinction between definitive and provisional omission. In any case, if the Chairman thinks the question ought to be put to the vote twice, he must first ask the Committee to vote on definitive omission.

M. de Magalhães (Portugal) :

Translation : I think that Article XVIII does not preclude a vote on provisional omission. It is simply a question of words ; provisional omission really means no more than adjournment. I will therefore substitute for my proposal for provisional omission a proposal for adjournment.

Mr. Miller (United States of America) :

I wish to call attention to the fact that the delegation of the United States has made a proposal definitely to suppress Bases Nos. 27 and 28. I think that proposal ought to be before the Committee if the vote is to be reopened.

The Chairman :

Translation : Differences of opinion have arisen on the result of the vote. Moreover, objections have been raised to Sir Maurice Gwyer's suggestion. In order to be sure of the Committee's opinion, I think we must vote on definitive omission.

M. Giannini (Italy) :

Translation : If we agree to mention the matter in the report I shall vote against unqualified omission.

The Chairman :

Translation : The Committee's opinion and that of the United States delegation will, of course, appear in the report.

I put to the vote the question whether Bases Nos. 27 and 28 are to be definitely omitted.

The proposal for definitive omission was rejected by seventeen votes to thirteen.

The Chairman :

Translation : I put to the vote the proposal for adjournment ; that is to say, for provisional omission.

The proposal for adjournment was adopted by twenty votes.

M. Giannini (Italy) :

Translation : I did not vote because I did not understand the procedure ; and I should like this statement to appear in the records.

What does provisional adjournment mean? Are we to take up the question again at this Conference or at another?

The Chairman :

Translation : I think M. de Magalhães' proposal was quite clear. We understood that it meant the provisional adjournment of the question until the end of the present Conference ; that is to say, if at the end of our work we have time to deal with this question, we shall take it up again. We shall then decide whether it should be omitted or not.

I think, in view of the result of the vote, we need not consider the Belgian delegation's recommendation.

M. de Ruelle (Belgium) :

Translation : The vote we have taken, in fact, leaves the door open to any solution which may seem expedient when the question is discussed at the end of the Conference.

If it is found possible to insert an explicit provision, we shall do so ; otherwise, we shall simply mention the matter in our report in the form of a recommendation.

22. BASIS OF DISCUSSION No. 26.

The Chairman :

Translation : An amendment to Basis of Discussion No. 26 has been submitted by the Danish delegation.

M. Lorck (Denmark) :

The Danish delegation proposes to insert in the first paragraph after the words " coastal State " the words " while the foreign ship was within ". The amendment is intended to make it quite clear that it is not necessary that both ships should be within the limit of territorial waters at the beginning of a lawful pursuit, but that this must be the case as regards a foreign ship. In the fishery inspection service, this is the most frequent case.

The second proposal is to omit the whole of the second paragraph. We propose this because it very often happens in the fishery inspection service that a foreign ship is captured outside the limit of territorial waters. It might be said that this is nearly always the case. The proposed rule will therefore make unnecessary trouble for both parties, and it has not so far been the practice.

M. de Armenteros (Cuba) :

Translation : I am fully in agreement with the proposed Basis of Discussion ; but, in order to avoid confusion, and since we are talking here of territorial waters and not of the high sea, I will propose a slight amendment, namely, that Basis No. 26 should be revised as follows :

" A pursuit of a foreign ship lawfully begun by the coastal State within its territorial waters on the ground of infringement of its laws or regulations may be continued until the ship enters the territorial waters of its own country or of a third Power."

Sir Maurice Gwyer (Great Britain) :

The British delegation accepts this Basis of Discussion and agrees with the first point raised by the Danish delegate, because the Basis, as drafted, is not altogether clear. The Basis in its present form seems to suggest that the pursuing ship alone might be in territorial waters, and the proposal of the Danish delegation seems to be that both ships must be in territorial waters. I am not very clear about that.

There is another point upon which I think the whole Committee will agree, namely, that the territorial waters must include interior waters. The foreign fishing boat, for example, might be fishing in an historic bay and might be chased from there on to the high seas. I therefore suggest that the Basis should be amended to include inland waters in line 2.

With regard to the second suggestion of the Danish delegation to omit paragraph 2 of the Basis, I should have thought it was convenient that the foreign State should know what was happening and that it would be an act of courtesy, perhaps, on the part of the capturing State to inform it ; but perhaps it would not be necessary to make paragraph 2 an absolute obligation. I think it should be indicated as an act of courtesy.

M. Lorck (Denmark) :

I would venture to explain a little the Basis of Discussion as regards the fishery inspection ship. The meaning is that the pursuit is lawful if the foreign ship is within territorial waters and the inspection ship is outside. Inspection usually takes place along the line and outside the line, because as soon as the trawler sees the inspection ship, he cuts his fishing-gear and goes outside the line. It nearly always happens, therefore, that they have to be taken outside the line.

It is for this reason that we have inserted the words : " A pursuit of a foreign ship lawfully begun by the coastal State while the foreign ship was within its territorial waters on the ground of infringement of its laws or regulations may be continued on the high seas and the coastal State may arrest and take proceedings ", and so on. It is not necessary for the inspection ship to be inside the limit in order to begin a lawful pursuit.

M. Raestad (Norway) :

Translation : I agree with the Danish delegation regarding the amendments to Basis of Discussion No. 26. I also agree with the British delegate that the wording of this Basis is incomplete.

Three kinds of pursuit may occur :

Pursuit beginning in inland waters and continuing across territorial waters ;

Pursuit beginning in territorial waters and continuing in the direction of the high sea ;

Pursuit beginning in the adjacent zone, in cases relating to Customs and sanitary laws, and continuing in the direction of the high sea or even upon the high sea.

As regards the first case, which has already been referred to by Sir Maurice Gwyer, namely, pursuit beginning in inland waters, there may be an offence or delict, and in that case the pursuit may be continued.

This is one of the cases to which the United States delegate referred when he spoke of the coastal State's rights in respect of vessels which have put in at and are leaving a port. Pursuit may really be begun in the port itself and may be continued.

I myself think this Basis requires to be completed. The Sub-Committee, however, might be asked to find the best formula.

M. Giannini (Italy) :

Translation : It seems to me that we shall not be settling the question by simply referring it to the Sub-Committee.

The Preparatory Committee's wording reads as follows :

" A pursuit of a foreign ship lawfully begun by the coastal State within its territorial waters on the ground of infringement of its laws or regulations may be continued on the high seas, and the coastal State . . . "

Thus, if I am not mistaken, this wording implies that the infringement and the pursuit take place simultaneously ; that is to say, the infringement and the pursuit must both begin in the territorial waters.

I think, too, I am right in saying that our Danish colleague proposes that the offence must be proved to have been committed in the territorial waters, but the pursuit may begin outside the territorial waters.

Is that what the Danish delegate means?

M. Cohn (Denmark) :

Translation : No.

M. Giannini (Italy) :

Translation : Then it is a matter of drafting, and we must try to find some way of amending the wording.

I should like to point out, further, that various aspects of the question may arise. Must the pursuit take place in the inland sea? Or in the territorial waters? Or outside the territorial waters? Or in the adjacent zone? Or outside the adjacent zone?

We might leave the inland waters out of account, as there is no need to mention them and the wording would thereby be simplified.

What we must know, and what is a rather more complicated matter, is whether the offence and the pursuit must take place simultaneously.

M. Cohn (Denmark) :

Translation : The question seems to me fairly simple. Let us take the case of two vessels, one a fishing vessel, which commits an infringement, and the other the inspection vessel, which begins the pursuit.

The question which arises is this : Must both vessels be within the limits of the territorial waters at the moment when the pursuit begins?

In our view, all that is necessary is that the fishing vessel should be in the territorial waters at the moment when the pursuit begins. The inspection vessel may quite well be outside the territorial waters at that moment.

M. Giannini (Italy) :

Translation : But do you think that simultaneity is necessary?

M. Cohn (Denmark) :

Translation : Of course.

M. Giannini (Italy) :

Translation : But you do not say so in your explanation.

The Chairman :

Translation : The question raised by the amendment submitted by the Danish delegation seems perfectly clear. M. Giannini has raised another question, and I confess I do not quite understand what he means by the term " simultaneity ". Does he refer to an offender taken *flagrante delicto?*

M. Giannini (Italy) :

Translation : No, that is another matter.

Our Danish colleague says the essential point is that the offence should be committed in the territorial waters, but the pursuing vessel may be outside the territorial waters.

This is not a matter of drafting, but a question of principle, on which we must reach agreement. I myself hold with the Danish delegation that pursuit may also be begun outside the territorial waters where the offence was committed in those waters.

M. Cohn (Denmark) :

Translation : The pursuit must be begun at a moment when the vessel committing the offence was still in the territorial waters.

M. Giannini (Italy) :

Translation : Must the inspection vessel which was outside the territorial waters first enter those waters?

M. Cohn (Denmark) :

Translation : That is not necessary.

M. Giannini (Italy) :

Translation : There is, therefore, no question of simultaneity. In short, do you want simultaneity or not?

M. Cohn (Denmark) :

Translation : The pursuit takes time, and, in the meantime, the vessel which committed the infringement may leave the territorial waters ; but the inspection vessel still pursues it.

M. Giannini (Italy) :

Translation : According to the wording of Basis No. 26, the pursuit cannot be carried on. That shows that the wording requires to be made clearer.

I will take an actual example. A Danish inspection vessel lying outside the territorial waters is signalled that a fishing vessel in Danish territorial waters has committed an offence and is about to leave those waters. Can the inspection vessel pursue it?

According to Basis of Discussion No. 26, the answer is in the negative, but according to the Danish amendment it is in the affirmative.

We must reach agreement on this point.

Then there is another question. I think the second paragraph may be omitted. We cannot ask to have notification of every petty infringement. There are cases where international courtesy demands notification, but this point may be left to the individual States to decide.

There is a further point. It is said that the coastal State has the power to arrest and take proceedings against the ship so pursued, provided that the pursuit has not been interrupted.

On that point, I think we are all agreed; it is a matter of fact and not of law. Nevertheless, we must examine the wording.

It is stated later that " the right of pursuit ceases so soon as the ship enters the territorial waters of its own country or that of a third Power ".

The first sentence is quite simple ; it is a question of fact, namely, of knowing whether there has been interruption or not. The second sentence, however, introduces a limitation by saying that the pursuit ceases if the ship pursued enters territorial waters, no matter what territorial waters.

Suppose, however, the vessel pursued is sharp enough to enter the territorial waters and leave them again after three minutes. Should the pursuing vessel arrest it or not?

I think we must confine ourselves to the first part of the Basis.

Ab el Hamid Badaoui Pasha (Egypt) :

Translation : I consider that the question of simultaneity does not arise, since it is a postulate of the infringement of the laws or regulations that it took place in territorial waters. The Basis of Discussion assumes that the infringement comes within the jurisdiction of the coastal State, and proceeds to lay down the conditions governing pursuit ; but the idea of pursuit in that Basis is in some respects rather indefinite, and the Danish amendment is designed to remedy this. According to that amendment, to pursue a ship does not mean merely to chase it, but in some cases to wait for it. An inspection vessel, when on the boundary of the territorial waters, is held to be continuing the pursuit if it keeps the vessel it is pursuing in sight. The Danish amendment does not, I think, change the idea underlying the Basis of Discussion ; it defines the sense of the word " pursuit ".

Sir Maurice Gwyer (Great Britain) :

I agree with the observations of the delegate for Egypt. Possibly, the point is only one of drafting, but it is an important point which the Sub-Committee will have to consider.

A case such as the following might occur : a fishing vessel has committed an infraction of the law within territorial waters. An inspection vessel some miles off, which cannot see the fishing vessel, and which cannot be seen by the fishing vessel, receives, let us say, a wireless message that an infraction of the law is being committed some distance off. It starts in pursuit before it has seen the fishing vessel at all. Is that the beginning of a pursuit or not? That seems to me to be a question of considerable importance and one which the Sub-Committee will have to consider. That is to say, is it not necessary in this Basis to define when a pursuit begins?

The second point has been raised by the delegate for Norway. When he was speaking of the possibility of a pursuit beginning in adjacent waters I am not sure whether he meant to suggest that under this Basis such a pursuit would be lawful It is not, however, a principle which the British delegation could accept for a single moment, unless, of course, it were authorised by some special Convention between the parties concerned.

Vice-Admiral Surie (Netherlands) :

Translation : M. Giannini says that the right of pursuit ceases when the pursued vessel enters territorial waters, and he takes the case of a vessel which is sharp enough to remain only three minutes in the territorial waters, this being deemed sufficient to cause the pursuit to be discontinued. On the other hand, if the vessel remains twenty-four hours in the territorial waters of another State and is " blockaded " by the pursuing vessel, at what moment may the pursuit be regarded as having ceased? The same question arises again in connection with war blockade.

I think it would be wiser to leave the Basis as it is.

M. Raestad (Norway) :

Translation : I think that the question raised by Sir Maurice Gwyer should be postponed until we examine the Bases relating to the adjacent zone. We can then consider it more fully, and I feel that the divergencies of opinion will not be so great.

M. Giannini (Italy) :

Translation : I propose that we refer to the Sub-Committee the question of simultaneity, that of the omission of the second paragraph of the Basis, and that referred to be the Netherlands delegate. I venture to point out to him that the interruption of pursuit is a question of fact. It cannot be regarded from a general point of view, because we may assume that a stop of three minutes does not constitute an interruption ; but there is no doubt at all if the stop lasts twenty-four hours. In any case, the question requires to be fully considered, and I therefore suggest that it should be referred to the Sub-Committee.

M. de Magalhães (Portugal) :

Translation : I support M. Raestad's proposal to adjourn the question of pursuit in the adjacent zone.

The Chairman :

Translation : May I take it that we agree on the following points? The principle in the Basis of Discussion is adopted and the Basis itself is referred to the Legal Sub-Committee, which is asked to examine, in particular, the question of simultaneity and the question of the moment at which pursuit may be regarded as having begun.

The question of the retention or omission of the second paragraph of the Basis is also referred to the Sub-Committee.

As regards the question whether the pursuit may be begun in the adjacent zone, it seems to me that the Committee does not favour the reference of the question to the Legal Sub-Committee, but wishes to adjourn it.

M. de Ruelle (Belgium) :

Translation : I feel doubtful whether the question of omitting or retaining the paragraph requiring the captor State to notify a capture on the high seas can be settled by our Legal Sub-Committee. I think that Sub-Committee would like to know the opinion of the majority of the Committee on the subject.

I myself think that such notification would be very useful. As we know by experience, when a fishing vessel is seized by another vessel it is always in the right. It complains to the authorities of its country that it has been the victim of illegal proceedings. I think it is desirable that the flag State should then have at hand the captor State's report,

in order to enable it to form an immediate opinion. That is in the interest of all.

It is, therefore, not a legal question, and the Sub-Committee will not settle it unless we give it some indication on the point now.

The Chairman :

Translation : It is proposed that we should give the Legal Sub-Committee some indication on the question whether a formula on the lines of the second paragraph should be included in the Convention. I will put this question to the vote.

The proposal was adopted by eighteen votes to six.

The Committee rose at 12.30 p.m.

ELEVENTH MEETING

Friday, March 28th, 1930, at 10 a.m.

Chairman : M. GÖPPERT.

23. BASIS OF DISCUSSION No. 8.

The Chairman :

Translation : The next item on the agenda is Basis of Discussion No. 8, to which amendments have been submitted by the British, Swedish, Norwegian, Japanese and Spanish delegations.

M. Sjöborg (Sweden) :

Translation : If I understood the Chairman aright, it is Basis No. 8 that is to be the subject of this morning's discussion. It has been proposed that we should then proceed to Bases Nos. 15, 16 and 17, but should not discuss Basis No. 7.

It seems to me, however, that Basis of Discussion No. 8 involves an exception to a rule laid down in Basis No. 7. This latter Basis provides a maximum breadth for bays which are to be regarded as inland waters. Basis No. 8 contains an exception to this rule, since certain bays, usually termed " historic bays ", must be regarded as inland waters, whatever their breadth.

Would it not be rather difficult to discuss the exception without first laying down the rule to which the exception refers? Would it not be better to discuss Bases Nos. 7 and 8 together? Moreover, I think that, in the opinion of several delegations, Basis No. 7 is itself closely bound up with Bases Nos. 3 and 4, which lay down the fundamental principle, as it were, with regard to the breadth of territorial waters.

In these circumstances, for the sake of clearness in our discussions and in order to avoid waste of time, it would, I think, be preferable to begin the discussion with Bases Nos. 3 and 4, and then proceed to Bases Nos. 7 and 8.

In deference, however, to the desire expressed by the Chairman, the Swedish delegation is prepared to begin to discuss Basis No. 8 to-day, although it is bound to make a reservation. In view of the connection between these two Bases, I myself could not discuss Basis No. 8 without reference to Basis No. 7; possibly, I may even go further and, when speaking of Basis No. 8, may deal with Bases Nos. 3 and 4.

The Chairman :

Translation : M. Sjöborg is quite right in saying that Basis No. 8 is intimately connected with Bases Nos. 7, 3 and 4. I think, however, that we can quite well discuss the special problem of historic bays. Naturally, the delegations sharing the views of the Swedish, Norwegian and Spanish delegations may, in the course of discussion, refer to other Bases ; it is impossible not to do so.

If the Committee shares my view, we can begin the discussion of Basis No. 8, with the reservation made by the Swedish delegation.

Viscount Mushakoji (Japan) :

Translation : I agree with M. Sjöborg's view ; but, since we have already begun to discuss Basis No. 8, I should like to give the reasons for the Japanese delegation's amendment.

In our opinion, a mere claim on the part of the State concerned — which seems to be the sole condition according to the present text, to judge from the words " by usage " — is not enough. For that reason, the Japanese delegation proposes that the words " long established and universally recognised " should be inserted before the word " usage ". The actual wording might be left to M. Rolin and M. Gidel, whose great abilities are well known.

In brief, the Japanese delegation cannot agree that the sole condition should be the proof furnished by the coastal State.

M. Giannini (Italy) :

Translation : In order to shorten our work, I agreed to the proposal that Basis No. 8

should be discussed at a meeting of the Committee. I must state, however, that the Italian delegation has reservations to make regarding that Basis, because it considers that it cannot take a decision on that particular matter without knowing the fundamental points of the Convention, and on these we are not yet agreed.

Sir Maurice Gwyer (Great Britain):

Are we to examine Basis No. 8 in detail?

The Chairman:

Translation: The question is on the agenda, but the Italian delegate has just told us that he considers we cannot discuss this Basis now, before a solution has been found for Bases Nos. 6 and 7.

If, apart from the reservations of the Italian delegation, the Committee still wishes to discuss Basis No. 8, we shall continue.

Admiral Keyserling (Latvia):

Translation: I quite agree with the Italian delegation. It is impossible to discuss Bases Nos. 6 to 18 at a plenary meeting without first settling the question of the breadth of territorial waters.

Sir Maurice Gwyer (Great Britain):

In my view, it is quite possible to discuss the question of historic bays without any reference to the earlier Bases of Discussion. The matter is quite distinct and apart, and the existence of an historic bay, the waters of which, as I understand the law, are part of the interior waters of the State and not part of its territorial waters, does not depend and cannot depend either on the breadth of the territorial belt nor, I think, on the definition of the ordinary bay.

An historic bay is a piece of water more or less enclosed by land which, for one reason or another, the coastal State regards as part of its interior territory. This, therefore, I submit, is a separate question, which the Committee might very well discuss at the present time.

The claim that a piece of water is an historic bay does not depend on the width of the entrance to the bay, but on altogether different circumstances. In the Basis of Discussion, it is stated that the belt of territorial waters "shall be measured from a straight line drawn across the entrance of a bay, whatever its breadth may be, if by usage the bay is subject to the exclusive authority of the coastal State".

I understand that the Japanese delegate criticises that definition on the ground that it is not precise enough. The British delegation shares that view, and has itself submitted a definition which is before the Committee. It suggests that the text should read:

> "The belt of territorial waters shall be measured from a straight line drawn across the entrance of a bay, whatever its breadth may be, if, subject to the provisions of this Basis";

That is to say, subject to the second part of the Basis, which my delegation suggests should read:

> "The coastal State is able to establish a claim by usage, prescription or otherwise, that the waters of the bay are part of its national waters."

My delegation agrees with the Japanese delegation that something more than mere usage is required — that some definite acts, if you like, of dominion exercised over this piece of water, are necessary.

The British delegation also considers it most necessary to include in the definition some such provision as is contained in the second part of its amendment, which reads:

> "For the purpose of determining whether the waters of any particular bay are or are not part of the national waters of the coastal State, regard shall always be had to the configuration of the bay; that is to say, the shape and degree of enclosure of the area of water therein, with special reference to the extent to which it penetrates into the land."

We consider that a provision on those lines must be added in order to make it clear that an historic bay must be a bay in the real sense of the word, and not a piece of water opening out towards the sea without any of the ordinary characteristics of what is usually known as a bay.

To define a bay more exactly would be extremely difficult, because pieces of water which are commonly known as bays vary infinitely. A bay may be a very small enclosure of water or it may run to an enclosure of hundreds of square miles. The view of the British delegation is that there must be some kind of configuration involving an inlet into the land, an indentation into the land, and a definite entrance into this piece of water. That must be established in the first place. Secondly, the claim has to be proved "by usage, prescription or otherwise"; the coastal State has to prove that it has exercised exclusive dominion over this piece of water. When those points are established, the waters become part, not of the territorial waters of the State, but of its inland waters; they become part of its national territory.

It may well be that, on further examination of this question in Sub-Committee, other elements will have to be added to the definition. The British delegation will examine with a perfectly open mind all proposals made to that end; but it is cordially in agreement with the Japanese delegation that the definition as it stands in the Basis is not sufficient.

May I add one other thing? It is quite clear that neither this Conference nor any Committee nor Sub-Committee of it could possibly undertake to draw up a list of historic bays. Yet

the matter is one of great importance, and some machinery ought to be devised by which the various nations of the world can exchange views on this point, with the object ultimately of obtaining a list of historic bays agreed internationally.

At a later stage, I shall propose that the Conference should suggest, before its work is completed, the setting up of some small body which might examine the claims of the various nations to historic bays with a view to making a report and possibly recommendations on the subject at a later date, to Geneva or elsewhere. The subject is one which has caused much friction and much dispute in the past and this seems to be a golden opportunity first of all to settle the principles on which the classification is to be based, and then, having settled the principles, to agree upon some list which will be binding for the future.

M. Spiropoulos (Greece) :

Translation : I am not competent to deal with the technical aspect of the question. I may say, however, that the question which is the subject of Basis No. 8 is independent of those referred to in Bases Nos. 7 and 6. Basis No. 8 touches upon a question of principle, the question whether the existence of historic bays is to be recognised. It has no connection with the breadth of the opening of a bay.

As regards the definition of historic bays, I agree with the British delegation. I think the text of the Basis of Discussion is inadequate.

Basis No. 8 provides that the onus of proving the existence of an historic bay is upon the coastal State : but the question arises as to when this proof must be furnished. At the time when a dispute arises? Or when the parties appear before a tribunal? I think it would be desirable for us to adopt Dr. Schücking's proposal that an international organ should be established to draw up in advance a list of historic bays. Until we are clear on that point, we cannot know whether an act is contrary to international law or not.

I will not go into further detail, because this question must be dealt with by a special Committee. I shall, however, draw the Committee's attention later to a number of points of drafting.

The Chairman :

Translation : We are certainly agreed not to begin a further debate on procedure. Moreover, we have already commenced to discuss Basis No. 8, and I think must go on, subject to the reservations made by the Swedish and Italian delegations. We shall make the further reservation not to take a decision to-day, our discussion being intended only to elucidate the question.

M. Giannini (Italy) :

Translation : I wish, in the first place, to define somewhat the nature of my reservation. I did not say simply that I could not take up any definite attitude in regard to this problem because the breadth of territorial waters has not yet been determined. I also said that it was very difficult to consider a particular problem while disregarding the general problem — a problem affecting the fundamental Bases of the Convention, on which we have not yet reached agreement.

Having said this, I now come to the problem itself. As we are merely examining it for the first time, I propose that we postpone it altogether. We are asked here to sign what amounts to a blank cheque, and I cannot do so. We are told that we are to draw up the general rules governing the legal status of historic bays. We are then to create an organisation to say what are the historic bays. I do not know what bays it is desired to regard as such and to provide with a legal status of their own. In these circumstances, I ask for the question to be postponed.

Sir Ewart Greaves (India) :

I should like to say, on behalf of the Government of India, that I agree with the remarks of the British delegate ; but I do not think that the words of the amendment put forward by him are quite wide enough. The British delegate has already himself suggested that the definition with regard to prescription, usage or otherwise must be somewhat altered, and I agree. We do not want too wide a definition, but we want it reasonably wide to enable certain claims to be put forward.

I venture to think that it may be necessary to take the question of configuration into account and whether a claim on historic grounds can be based on the necessities of defence ; and, further, so far as the Government of India is concerned, it will have to consider, when such claims are under consideration, whether it shall put forward, in respect of some of the waters that lie to the south of India, a claim on behalf of those waters based on the ground that they form a "partially blocked strait ". I do not want to state in detail now what those claims are ; it would be impossible for this Conference to deal with them, and I think the only way of doing so is to set up a small Committee to consider the claims made, which must, of course, be in accordance with such definition as this Conference decides should be laid down with regard to Basis No. 8.

I should like to ask the British delegate whether the words " or otherwise " are intended to be merely what I may call *ejusdem generis* of the words that have gone before, or whether they would include a claim based on the ground of configuration, or a claim based on the ground of defence arising from

the configuration of the coast, or a claim to a " partially blocked strait " such as I have already indicated.

Those are questions that will have to be considered, and, when Basis No. 8 is referred to the Drafting Committee, I hope the latter will consider whether it can add to the amendment (if it decides to adopt the British amendment) such words as would enable reasonable claims to be made.

On behalf of the Government of India, I would say that it desires, as I am sure we all do, to reach agreement as far as possible and it does not wish to make the work of this Conference more difficult by putting forward too large or too wide claims.

M. de Magalhães (Portugal) :

Translation : Disregarding for the moment the questions of the breadth and limits of the territorial sea, I wish to maintain the proposal which the Portuguese delegation submitted in regard to Basis No. 8.

This Basis recognises the well-known and much-discussed doctrine of historic bays. But what is the essence of that doctrine? According to Basis No. 8, certain bays are, by usage, subject only to the authority of the coastal State, even though their opening exceeds ten miles in breadth. This idea cannot, however, be regarded as unanimously accepted.

Some publicists adduce, not only usage, but also other factors which must be taken into account in determining the character of these bays. This other notion is very clearly expressed by Drago in his statement of the grounds for his dissent from the award rendered by the Hague Permanent Court of Arbitration in 1910 in the case of the North Atlantic Coast Fisheries between Great Britain and the United States of America.

Developing and further defining the ideas already set forth by Edmund Randolph in the Delaware Bay case of the *Grange* in 1793, Drago stated as follows :

> " So it may safely be asserted that a certain class of bays, which might be properly called the historical bays, such as Chesapeake Bay and Delaware Bay and the great estuary of the River Plate in South America, form a class distinct and apart, and undoubtedly belong to the littoral country, whatever be their depth or penetration and the width of their mouths, when such country has asserted its sovereignty over them, and particular circumstances, such as geographical configuration, immemorial usage, and, above all, the requirements of self-defence, justify such a pretension."

If we examine the individual and collective drafts which have been prepared regarding the territorial sea, we find that some of them do not admit the doctrine of historic bays, while others admit it in approximately the same form as that defined in Basis No. 8, but using different terms which give that doctrine a wider or narrower scope.

One of these proposals — that submitted by Captain Storny to the Buenos Aires Conference of the International Law Association in 1922 — contains a formula in accordance with Drago's ideas. It reads as follows : —

> " A State may include within the limits of its territorial sea the estuaries, gulfs, bays or parts of the adjacent sea in which it has established its jurisdiction by continuous and immemorial usage or which, where these precedents do not exist, are unavoidably necessary according to the conception of Article 2 ; that is to say, for the requirements of self-defence or neutrality or for ensuring the various navigation and coastal maritime police services."

In support of this article, the distinguished author of the proposal said :

> " We regard this article as of the greatest importance ; it affirms in a more decisive form the last part of Article 3 of the *Projet de définition et régime de la mer territoriale* of the Institut de droit international. Clearly, too, it contains in synthesis the doctrine of historic bays, according to the manner in which that old principle was formulated by Drago.
>
> " The final stipulation of the article is perfectly explicable as regards the new nations — the American nations, for example — many of which possess long and still very thinly populated coasts, and in respect of which the condition of long-established dominion cannot be adduced, as in the case of nations which have already existed for a thousand years or more."

Generally speaking, usage must be respected, but sometimes usage may be unjustified. Moreover, if certain States have essential needs, I consider that those needs are as worthy of respect as usage itself, or even more so. Needs are imposed by modern social conditions, and if we respect age-long and immemorial usage which is the outcome of needs experienced by States in long past times, why should we not respect the needs which modern life, with all its improvements and its demands, imposes upon States? I personally cannot see why we should not.

In the observations which I had the honour to submit to the Committee of Experts on Professor Schücking's report, I said :

> " To regard as being part of the high seas narrow areas of sea within the limits of territorial waters, and running inland following the sinuosities of the coast, would involve great difficulties and risks, both for the State itself and for the community of nations, owing to the disputes to which

such a situation might give rise. It may even be said that national feeling and the most legitimate interests of the State affected (*e.g.*, Norway) would be deeply wounded."

These observations have not been disputed. I therefore uphold them here, and, in accordance with the ideas expressed in them, the Portuguese delegation submitted its proposal to add to Basis of Discussion No. 8 the following words :

" . . . or if it is recognised as being absolutely necessary for the State in question to guarantee its defence and neutrality and to ensure the navigation and maritime police services."

In the considerations it adduced to-day, the British delegation spoke of the establishment of an international organisation. I venture to remind you that Article 3 of Professor Schücking's draft speaks of the creation of an International Waters Office. After discussion by the Committee, Professor Schücking agreed to omit that article. I brought it forward again, but it was not taken into account either by the Committee of Experts or by the Preparatory Committee.

This idea has now been put forward once again. On behalf of the Portuguesc delegation, I wish to say that, from the general point of view, I am prepared to agree to the establishment of such an organisation, provided that the character and functions with which it is endowed are satisfactory.

Mr. Miller (United States of America) :

The delegation of the United States is not in accord with Basis of Discussion No. 8 as at present drafted, but for reasons which are quite different from, and even opposed to, some that have already been expressed.

I would mention in passing that the delegation of the United States has this morning laid on the table certain amendments which are of a rather technical nature and which I do not propose to discuss ; this question is not, in my opinion, one of historic bays. Both words are inaccurate — both " historic " and " bays ". It is a question, so far as the latter word is concerned, of waters, not merely waters that either from habit or some technical definition are called bays, but waters by whatever name they may generally or technically have been called. Furthermore, the word " historic " is an inaccurate word, because it is not only a question of history, it is also a question of the national jurisdiction of the coastal State. That, I submit, is the question involved in regard to these waters, and the continual use of the expression " historic bays ", with mention of one or two bays here and there in different parts of the world, has led to a great deal of confusion of thought as to the principles which are involved.

I wish to call attention to the amendment proposed by the delegation of the United States as an additional article, in Document 19, paragraph *(c)*. I desire to read the first paragraph :

" Waters, whether called bays, sounds, straits, or by some other name, which have been under the jurisdiction of the coastal State as part of its interior waters, are deemed to continue a part thereof."

I consider, therefore, that Basis of Discussion No. 8, which reads : " If by usage the bay is subject to the exclusive authority of the coastal State ", is totally inadequate in its use of the word " bay ". I shall comment in a moment or two on the remainder of that Basis, which deals with the question of proof.

I quite agree with the view that it is not possible at this Conference, either in a Committee or in a Sub-Committee, to frame a list of these waters or to establish a line which would indicate where these waters are. No one could propose that, but in Basis of Discussion No. 8, and in various amendments that have been put forward, reference is made to the question of proof.

The last sentence of Basis No. 8 reads, " The onus of proving such usage is upon the coastal State ". In certain of the amendments and during the discussion use has been made of the expression that a claim shall be established or that a claim shall be proved. The view has been put forward that a Committee should be set up. What powers is that Committee to have? Is it a Committee merely for purposes of examination? In that case, I cannot see its utility. If it is to have power to take a decision, I am bound to say that we could never agree to it.

Any question in regard to these matters is, in my opinion, a question which could only arise between Governments and could only be discussed by them. Nothing can be done until that discussion has taken place. The point cannot be settled in this Convention. We have agreed that all these meticulous questions of detail, cannot be settled by this Convention or by any Committee of this Conference. So far, therefore, as there may be a difference of view between the Governments, they must exchange opinions on the subject. The point cannot be settled by any tribunal to be set up by the Convention we are to prepare here.

Accordingly, the second sentence of *(c)* of the United States proposal provides that " charts indicating the line drawn in such cases shall be communicated to the other parties hereto ".

M. Spiropoulos (Greece) :

Translation : The Greek delegation is glad to note that the Italian delegation does not intend to refrain from taking any part in the discussion on historic bays. The first Italian delegate himself said that it was not impossible, but simply difficult, for him to give an opinion on the subject. I do not agree, however, with

his reasons. He said that we want to talk of historic bays, but we do not know which are those historic bays.

If, however, we knew which were the historic bays, the problem would be solved, as we should then have laid down the principle. It is not the actual bay which is characterised as historic; it is the principle, the rule, the hypothesis, which characterises the bay as historic.

We are all in agreement as regards the codification of international law; we want to codify legal principles. We are not trying to find out in advance what bay must be regarded as historic or not; we simply want to lay down the principles that govern the question. Accordingly we must deal only with principles and not with particular bays. The case is the same as regards the passing of laws: we do not try to find out in advance to what persons the laws will apply. The aim is simply to lay down a rule.

We have heard the Portuguese delegate's proposal to add the following to Basis of Discussion No. 8:

> " . . . or if it is recognised as being absolutely necessary for the State in question to guarantee its defence and neutrality and to ensure the navigation and maritime police services."

In my opinion, we are faced here with another question which has nothing to do with historic bays. We consider that a bay may be historic for any reason whatever, because, for example, the State feels bound to regard it as such in order to meet economic or military requirements. The reasons which make a bay historic are most diverse.

M. Giannini (Italy):

Translation: Do they even include archæological reasons?

M. Spiropoulos (Greece):

Translation: Yes. Everything depends on the meaning we attach to the word " historic ". We have given a definition of that word. We have said that an historic bay is one which is subject to the exclusive authority of the State. We do not indicate the reasons why this is so; we have not to examine that question. The reasons may be military, economic, connected with national defence, or even archæological, as M. Giannini suggests, and this last point is one which particularly concerns my own country.

I consider, therefore, that the Portuguese proposal has no connection with the problem we are examining in regard to Basis No. 8. I cannot see the justification or necessity for that proposal. It would be going too far to recognise the authority of a State over a bay simply on the ground that that State needed it for purposes of national defence. Military necessities are constantly changing, and a bay which would be regarded as subject to the exclusive authority of a given State at one time would not have the same character as another.

As regards Dr. Schücking's proposal for the establishment of an international office, I gave it my support just now, and I may add that my Government, in its letter of April 13th, 1926, stated that it considered the idea would prove very useful. I think, however, that, instead of creating a new organisation, it would be better to give special powers to an existing committee of the League of Nations.

M. Sjöborg (Sweden):

Translation: Broadly speaking, the Swedish Government shares the views just expressed by the delegate of the United States. The provisions of Basis No. 8 rest on the theory of the so-called historic bays. My Government does not recognise that theory, and — if I understood Mr. Miller aright just now — neither does the Government of the United States of America.

In order to explain my view, I must remind you of the reservation which I made just now and which the Chairman kindly noted. I cannot discuss Basis No. 8 without reverting to Basis No. 7. Basis No. 8 lays down an exception to the rule set forth in Basis No. 7. That rule provides that bays, the breadth of which exceeds ten miles, must be regarded as territorial waters, and the Swedish Government cannot accept such a thesis.

In these circumstances, it seems to me desirable to examine whether this rule is based on international law or not. My Government's reply is that it is not. I will not take up your time with references to the works of jurists. I will only mention Lawrence, Strupp, Hall and Oppenheim, who are of opinion that there is in international law no rule of any kind — relating to a ten-mile, six-mile or any other specific limit — restricting the breadth of bays which must be regarded as inland waters.

A judicial award has been cited in favour of the ten-mile rule; our Portuguese colleague has already referred to it. This is the award rendered by the Hague Tribunal of Arbitration in 1910 in a dispute between the United States of America and Great Britain; but the assertion that by that award the Tribunal confirmed the ten-mile rule is not correct. The Tribunal's decision in favour of that rule occurs, not in the award itself, but in a special recommendation. Moreover, that recommendation was based on the fact that the bays in this particular dispute were British, and that Great Britain, in her fisheries Conventions concluded with various other Powers, had applied the principle of the ten-mile limit. On the other hand, if we turn to the award itself — and it is the award which must be considered — we find that, in accordance with the contention put forward on that occasion by the British Government, the Tribunal expressly declared that, in calculating the breadth of territorial waters in bays, the ten-mile limit is not recognised in international law any more than any other.

As far as I am aware, nothing to change this view has occurred in international usage since 1910.

Neither can the North Sea Fisheries Convention, concluded in 1882 between Great Britain and other Powers, be cited in support of the claim that the ten-mile rule is universally recognised. That Convention fixes a limit of three miles for territorial waters in general and ten miles for bays. Needless to say, it is only in the nature of a *res inter alios acta* as far as non-acceding Powers are concerned. Moreover, it relates only to fisheries, a fact pointed out by English authorities in commentaries which I may describe as almost official.

I would add that some of the contracting parties have stated in their legislation on the subject that the question at issue related solely to the fixing of the boundaries of fishing-grounds. I will only point out in this connection that, in a Decree issued in 1912, France laid down that, for purposes of neutrality, her territorial waters extended to a distance of six marine miles from the coast. It is true that this was not a line fixed for bays, but for the territorial belt in general; nevertheless, the rule relating to bays obviously cannot be of greater value than the rule relating to territorial waters in general.

Further, the British Government's memorandum of 1910 to the Hague Court of Arbitration stated, with regard to Conventions on fishing, that they fixed by common consent a special limit of ten miles on the coasts to which they referred, but that it should be noted that special Conventions of that kind were incompatible with the contention that any limitation whatever of the breadth of bays — such as those then under discussion — formed part of general international law.

I now revert to the notion of historic bays. Obviously, for those who dispute the existence of a maximum breadth, the theory of historic bays loses its *raison d'être*. Hence it is only logical that, in its award of 1910, the Hague Tribunal of Arbitration, when denying the existence of a general rule of international law fixing a maximum limit for territorial bays, also refuses to admit the principle of historic bays.

I will not weary you with long quotations. I will venture, however, to read one of the grounds given by the Tribunal for the purpose of explaining why it could not accept the notion of historic bays :

> " Neither should such relaxations of this claim as are in evidence be construed as renunciations of it ; nor should omissions to enforce the claim in regard to bays as to which no controversy arose be so construed. Such construction by this Tribunal would not only be intrinsically inequitable, but internationally injurious, in that it would discourage conciliatory diplomatic transactions and encourage the assertion of extreme claims in their fullest extent."

Thus the Tribunal found that, although established usage in cases where such usage can be proved furnishes a serious basis for claiming that a bay is territorial, it cannot be inferred *a contrario* from the absence of such proof that a bay is non-territorial. The absence of proof may simply be due to the fact that the bay in question has never been the subject of a dispute.

Consequently, the Swedish Government rejects the thesis of historic bays. What is its view on the question? It considers that the individual Governments have the right to decide for themselves what bays should be given the status of inland waters. Naturally, this cannot be done in an arbitrary manner. In the amendment which we had the honour to submit a few days ago jointly with the Norwegian delegation, we were careful to state the conditions which, in our opinion, must form the basis determining the character of the bay. These conditions are the needs of the State or the population concerned and the special configuration of the coasts or the bed of the sea covered by the coastal waters.

M. Gidel (France) :

Translation : I only wish to say one word regarding M. Sjöborg's reference to a French text. The Decree to which he refers relates solely to the application of Hague Convention XIII of 1907. That Convention concerns neutrality, and the Decree in question can hardly be cited for any purpose connected with historic bays.

M. Raestad (Norway) :

Translation : If we regarded these discussions from the point of view of doctrine and principle, we might well despair of ever arriving at any settlement, so divergent are the views held. It seems to me, however, that, as representatives of our Governments, we ought to do our best to determine the practical consequences that may result from the various doctrines.

Our task, it is true, is a very arduous one ; at present, however, we must remember that, if we succeed in laying down certain principles and rules, we shall have done most valuable work. In a field such as this there can be no question of complete codification, because the very fact that territorial questions are concerned means that codification can only be partial. We shall, therefore, have to be content if we can lay down rules which may serve in the

future to guide the Governments when they have to negotiate over disputes.

Reverting to doctrine and fundamental ideas on the subject, we find that two systems exist. There is the system advocated in the joint Norwegian and Swedish amendment, whereby each State will fix the base-lines along its coasts — in accordance, of course, with certain principles. Then there is the other system, whereby certain rules will be laid down which may be applied geometrically, due allowance being made in special cases for historical considerations or the *status quo*.

I venture to say that the system advocated by the Norwegian and Swedish delegations has, at all events, the merit of simplicity. It enables rules to be laid down on which agreement could be reached, and, further, it enables Bases Nos. 9, 10, 11 and 13 to be omitted.

Moreover, when I examine the proposal of our American friends, with their vast geometrical and mathematical system, I am somewhat afraid that we may get into very deep water, and that the technical experts will have a good deal more to say than we jurists. Can we not possibly find a system free from things that are not merely illogical but are mutually contradictory?

Having said this, and while maintaining until further notice the view expressed in the Swedish-Norwegian amendment, I will now add a few words on the problem at present before us, which is a special case lying outside our system. In this, my task is an easy one, since it has already been accomplished by the United States delegate and M. Sjöborg. I will venture, nevertheless, to flog a dead horse.

It has been said that there are historic bays. Let us take the starting-point, I will not say of the British contention, because it is a very common one, but the contention found in the books. Let us admit that there is an international usage as regards bays. What principle of existing international law is there to determine that this international usage, worthy as it is of being recognised, may be limited to bays? We really cannot plead custom, because we should then have to know on what principle custom can make a bay sacrosanct. Certainly, no such principle exists. If anything else need be added we may, as Mr. Miller proposes, mention the waters which, rather than bays, ought to be regarded as territorial. I have in mind the intervals between the inlands of archipelagoes composed of rocks. Those intervals are closed much more effectually by nature against navigation, and they belong much more to the territory of the coastal State, since they are, as it were, submerged portions of the mainland.

I could adduce additional arguments, but I do not think my case needs further evidence.

It has also been said that we must recognise not only historic bays, but also historic rights over archipelagoes, enclaves and indentations. Why should we stop there? From time immemorial States have adopted the principle of drawing base-lines. Why should we not recognise this well-known principle, which has always been applied, as being consecrated by history?

Our United States colleague not only destroys the theory of bays, but he destroys history as well by saying that we need take no account of it. I will now be the devil's advocate. We must always remember the words of Pascal, that we must first grant our opponent all that is true in his idea, because there is always something true in an idea, even in a theoretical idea.

There may be bays in regard to which a question of jurisdiction has arisen for some reason or other — perhaps on the ground of defence. Such bays have perhaps come to be regarded as possessing a special character, particularly in times of war.

Apart from these bays, which may be said to be internationally recognised or in regard to which international arrangements exist, there are other cases, and, as the Hague Tribunal of Arbitration stated in 1910, it cannot be inferred that, because one particular bay is recognised as forming part of the territorial waters, another bay does not. Take the case of fisheries, for example. If for any reason a dispute arises between Governments as to whether a very large bay constitutes inland waters or not, and if it is afterwards agreed that it does constitute inland waters, the inference cannot be drawn therefrom that other and smaller bays are not inland waters.

If I understand the arguments of our United States colleague aright, he denies that " bays " can be historic, but he also wishes to get rid altogether of the conception of an " historic " claim. He abides by the *status quo*, and there I agree with him. I do not think that the codification of international law should have the effect of upsetting the *status quo*, but I will say that all the ground we can wish to cover in the provisions we draw up is contained in the Swedish-Norwegian amendment.

We have laid down two rules. We have said that the base-lines should not be " longer than is justified by rules generally admitted or a usage internationally recognised for a given region " — that relates to historic bays, if such exist ; and then, unless I am mistaken, comes the same idea as that expressed by the United States delegation — " or by principles consecrated by the practice of the State concerned and corresponding to the needs of that State or of the population concerned and to the special configuration of the coasts or the bed of the sea covered by the coastal waters ".

Thus, in our statement of the rules to be followed, we have been more circumspect and more moderate than the authors of the United

States delegation's amendment. The base-lines must be fixed according to the generally accepted rules — in other words the *status quo* — or in accordance with established principles, consistent with the needs of the population concerned and the special configuration of the coasts.

In conclusion, I would repeat what was said just now by our colleague of the Indian delegation. We for our part do not wish to make the Committee's work more difficult than it actually is, by putting forward extreme proposals. We shall therefore act with the moderation which is essential if we are to reach an agreement.

M. de Magalhães (Portugal) :

Translation : I find that we are once more in difficulties over a matter of words. As has been very rightly said, the term " historic bays " is inaccurate. Nevertheless, there is the question of principle, as the Greek delegate himself recognises, and it is the question of principle with which we are mainly concerned. In opposing the Portuguese delegation's proposal, the Greek delegate said that the needs of the State could not constitute sufficient justification. Must we then rely solely on usage, or the desire or caprice of States? Certainly not.

The Greek delegate added that the State's needs — military, economic or other — were constantly changing. But there is one thing which does not change, and that is the configuration of the coast itself, the bay from the geographical point of view. And that is enough.

Vice-Admiral Surie (Netherlands) :

Translation : In our country, the configuration of the coast is changing every day.

M. de Magalhães (Portugal) :

Translation : It is true that the configuration of the coast may change, but important changes are rare, and when they occur the previous rule no longer applies.

What I mean is that, so long as the configuration of the coast does not change, the fresh or future needs of the coastal State cannot extend the application of the rule I have proposed.

As regards the question of principle, there are two lines of thought : according to one, the so-called " historic " bays are not admitted ; while the other, though it does not accept them, recognises that certain factors justify a departure from the rule laid down in Basis No. 7.

It was in this sense that the Portuguese delegation drafted its amendment, which constitutes a kind of compromise between the two opposing schools of thought.

Dr. Schücking (Germany) :

Translation : The German delegation agrees with all the arguments put forward this morning by the delegates of Japan and the United Kingdom and by M. Spiropoulos, delegate of Greece.

The well-known dispute regarding the Newfoundland fisheries proves the need for clear and definite rules in regard to bays as well. In my opinion, it is the duty of our Conference to draw up these rules.

Sir Maurice Gwyer (Great Britain) :

I should like to add one or two words to clear up certain misunderstandings. In the first place, I agree with what has been said about the expression " historic bays ". It is a foolish expression and I do not know who first invented it, but I have sought in vain for a better one. I hope that, before the Conference closes, M. Rolin will have inscribed himself on the pages of history and will have produced some new nomenclature which we can all accept. The present term is bad and misleading and it complicates our discussions. At the moment, however, we must make use of it.

Secondly, I agree with what Mr. Miller has said, namely, that there are other waters which may be included in the term, for example, straits, possibly, and estuaries and waters of that kind. But, granted all that, there still remains the further problem. If once it is accepted as international law that there is a belt of territorial waters which belongs to a State, and that anything outside that belt is part of the high seas, then it is clear that every State which claims jurisdiction over an historic bay, an historic strait, an historic estuary or an historic fjord — or whatever you like to call it — is claiming jurisdiction over a part of the high seas, and that, in my view, is a claim which must necessarily be regulated by some recognised rules of international law. Otherwise, we return to the old state of affairs in which every State claimed the right to annex as part of its own territory some part of the high seas. My own country did so in centuries past when it claimed that what were known as the King's Chambers were part of the interior waters of the United Kingdom. That claim was abandoned many centuries ago. There are other nations represented here to-day whose ancestors equally long ago made even wider claims over the high seas, and those claims have disappeared too.

But, even at the present day, there are States which, for one reason or another, claim that certain waters which, under ordinary rules of international law, would be part of the high seas, are nevertheless part of their inland waters. That claim is a fact, and in many cases it is universally recognised by all other States. In my view, however, there must be some rules to regulate the right to make a claim of that kind. The Government of India would not, I think, hold that at any future time it could claim the whole of the Bay of Bengal as part of the territorial waters of India.

M. Gidel, when floating in his yacht on the Bay of Biscay, would never suggest that a day would come when his Government could or would wish to claim the whole of the Bay of Biscay as part of the inland waters of France. If, therefore, the right to make these claims is to be limited, as we all agree it must be, there must be some rules governing the question.

I listened with the greatest attention to what was said by the delegates of Norway and Sweden, and it must be recognised by all of us here that the coast of Norway and Sweden presents very special problems of its own, problems which most receive, I think, the sympathetic attention of all their neighbours. The Swedish delegate, towards the end of his speech, said that, in his view, every State must have a right to claim what its own historic waters were ; but, having gone as far as that, his logical mind revolted from the conclusion to which that argument seemed to lead, and he added that, of course, that right must not be exercised in an arbitrary fashion. In other words, he recognised that there must be rules to govern every State.

Our problem here to-day is to decide what those rules should be, as Dr. Schücking has reminded us. Then, if it be once assumed, as I think it must be, that there are rules which govern, or which ought to govern, the claims of States to exercise jurisdiction over parts of the high seas and convert them into their own inland and historic waters, perhaps the question becomes one of detail which might be referred to the Sub-Committee.

Speaking for myself and for my Government, we cannot doubt that these rules exist. It may be difficult to formulate them with sufficient precision to satisfy all States, but I think it is well worth making the attempt and from what the delegates of Norway and Sweden said I am inclined to think — I may be too sanguine — that the difference between us is perhaps not so great as might be thought.

M. Giannini (Italy) :

Translation : I am wondering what is the outcome of our very long discussion. I think it is an omelette, and not even a plain omelette ; and its odours are so varied that I do not know how people will be able to eat it.

We began in a lighthearted mood to define historic bays. Just now our Greek colleague was speaking of economic and military needs, I myself mentioned archæology, and some one even suggested to me the dawn of history. Just see how one can go!

All bays are historic, because there is not a bay without a history. What then is the subject of our discussion? It was laid down in the experts questionnaire, which asked whether some formula should be adopted for certain bays.

Sir Maurice Gwyer has said that the term " historic bays " is a foolish one, and he hoped that M. Rolin would find a satisfactory formula. Our colleague must regard M. Rolin as the most revolutionary of international lawyers. I do not know if he really thinks so, but I am of opinion that, if we are to reach an understanding, we must believe it.

We have all studied manuals of international law, but we seem to have forgotten some of our knowledge when we entered this Conference. In the present case, that of very historic bays, we had in mind the legal sense of the word, good or bad, adopted by international lawyers.

After hearing the British delegate's proposal, I wondered what we were going to do. The scope of the problem has been widened, and our British colleague himself has said that we are going to establish a legal status. We can then think about drawing up regulations for historic bays. To follow up national bureaucracy by increasing international bureaucracy would be a terrible prospect.

I am glad to see, however, that, like Saturn, you have devoured your children ; and you were quite right to do so. You have thus made the problem clearer, and you now want simply to regulate the legal status of a certain very limited number of bays.

Our colleague from the United States has said that he was not concerned with history, and in some ways I envy him. He himself sets everything aside ; yet he seizes it again at once with both hands. For, if we adopted the United States delegation's formula, we should not only have entirely disposed of the historic bays, but of the Convention as well. I imagine Rule *(c)* proposed by the United States delegation appearing in the Convention. I can understand your making a Convention or doing nothing at all. But there seems no point in making a Convention so wide that it settles nothing.

The Swedish and Norwegian delegations have proposed another formula which presents another aspect of the problem. It is not as drastic as that of the United States delegation.

Do you want to widen the problem ; in other words, to recognise that there is a large number of historic bays? In that case, we shall discuss the question when you have a detailed scheme dealing with the subject. I therefore propose postponement. Now that we have recognised that there are not only historic bays but others as well, we must examine the question, and we must define what bays are regarded as historic. This brings me to the following proposal :

> " The Conference expresses a *vœu* that the Communications and Transit Committee should appoint a special Committee to study what are the so-called historic bays, and what is their present *de facto* and *de jure* situation, with a view to collecting the data

necessary to codify their legal status at a subsequent Conference for the Codification of International Law."

Law does not anticipate life. When I know what the historic bays are that I am asked to regulate, I can consider what the best regulations will be. As the British delegate said the other day, we must come down to earth a little. Are we prepared to consider the problem of the historic bays which we already know ; that is to say, those to which international custom applies? If so, then, as the Italian Government stated in its reply, we can face the problem, provided we start from a fundamental principle, namely, that the number of historic bays must not be increased. I may add that we must approach the problem in a liberal spirit, because we can hardly admit that, in this year 1930, instead of achieving progress in international law, we are falling back.

If the question is thus circumscribed, I am quite prepared to join a small Sub-Committee to examine the problem on that basis ; otherwise, I have two other proposals to make — either that we should adjourn the question, or that the League of Nations should be asked to study its practical and theoretical aspects.

The Chairman :

Translation : Our discussion is closed. In view of the close connection between Basis of Discussion No. 8 and other Bases we cannot for the moment reach any decision. I think the whole question should be referred to the Second Sub-Committee, which will continue to study it and endeavour to find a solution. The Second Sub-Committee will take due note of the Italian delegation's proposals.

M. de Ruelle (Belgium) :

Translation : I understood we were to refer the question to the Legal Sub-Committee. I cannot see that we should be helping the study of the problem by referring it to the Technical Sub-Committee. A number of facts have emerged from to-day's discussion. I will not say what I think them to be, because that would be reopening the debate. I cannot help feeling, however, that the Legal Sub-Committee would be better qualified than the Technical Sub-Committee to place us on the road to a solution.

M. Spiropoulos (Greece) :

Translation : I second M. de Ruelle's proposal.

Vice-Admiral Surie (Netherlands) :

Translation : I also think it would be preferable to refer the question to the Legal Sub-Committee.

M. Giannini (Italy) :

Translation : I propose that we appoint a special Sub-Committee comprising some technical elements.

M. de Ruelle (Belgium) :

Translation : To state my idea more exactly, I will say that, if we ask experts to solve the difficulty, they will tend to look at concrete cases only, and will, in my opinion, do what would rather be the work of judges in the event of a dispute. We, however, are here to codify international law, and I think that our primary duty is to arrive at principles.

M. Novakovitch (Yugoslavia) :

Translation : We might perhaps combine the jurists and the technical experts.

M. Spiropoulos (Greece) :

Translation : I support M. Giannini's proposal. I think, however, that it would be better to ask the Legal Sub-Committee to examine the problems first, and, when they have laid down the principles, the question should be referred to the Technical Sub-Committee.

The Chairman :

Translation : I proposed the reference of the matter to the Technical Sub-Committee on account of the close connection between Basis No. 8 and the question of the territorial waters limit. The Technical Sub-Committee is not composed exclusively of experts ; it includes various delegations assisted by their experts, so that legal considerations will also be taken into account. If the Technical Committee thinks it desirable to form a small Sub-Committee to study the question in due course, it will be free to do so. That is my own opinion, but it is for the Committee to take a decision.

M. Gidel (France) :

Translation : You have just said, Mr. Chairman, that the Committee must decide whether Basis No. 8 is to be referred to the Technical or to the Legal Sub-Committee. Perhaps the issue would be rendered clear if you mentioned that you then intend to put to the vote the suggestion submitted by M. Novakovitch and M. Giannini, who, if I understand aright, propose the reference of the matter to the Legal Sub-Committee, which will consult the Technical Sub-Committee on points on which the Legal Sub-Committee thinks it desirable to obtain expert advice.

M. Giannini (Italy) :

Translation : That is not exactly what I suggested. It is a fourth proposal ; but I can accept it.

The Chairman :

Translation : I will therefore put to the vote first of all the question whether Basis No. 8 is to be referred to the Technical Sub-Committee. If the decision is in the negative, I will put to the vote the proposal of M. Novakovitch, seconded by M. Gidel and M. Giannini, that the matter should be referred to the Legal Sub-Committee with power to consult the Technical Sub-Committee.

M. Novakovitch (Yugoslavia):

Translation: I proposed reference to the Legal Sub-Committee strengthened by the addition of experts.

M. Gidel (France):

Translation: In that case my delegation does not second M. Novakovitch's new proposal.

The proposal to refer the question to the Technical Sub-Committee was rejected. On a second vote being taken, M. Novakovitch's first proposal, amended by M. Gidel, was adopted.

The Committee rose at 1.10 p.m.

TWELFTH MEETING

Saturday, March 29th, 1930, at 11 a.m.

Chairman: M. GÖPPERT.

24. BASES OF DISCUSSION Nos. 15, 16 AND 17.

The Chairman:

Translation: To-day we come to Bases Nos. 15, 16 and 17, to which the Japanese, British and Swedish delegations have submitted amendments.

M. Spiropoulos (Greece):

Translation: The question whether warships may cross the territorial waters of a State has been examined by the Sub-Committee, and the full Committee does not know what decision has been taken. It is important, I think, that we should be informed on this point if we are to know what action to take regarding Basis No. 15.

M. François (Netherlands) (Rapporteur of the Legal Sub-Committee):

Translation: The text adopted by the Legal Sub-Committee is as follows:

> "As a general rule, a coastal State will not prevent the innocent passage of foreign warships through its territorial sea and will not require previous authorisation or notification. A coastal State has the right to regulate the conditions of such passage. Submarines must pass on the surface."

Vice-Admiral Surie (Netherlands):

Translation: The British delegation in its amendments asks for an addition to Basis No. 15. The result of this would be that, if, within the entrances of a strait which are not more than twice the breadth of territorial waters, part of the strait is more than twice the breadth of territorial waters, a "lake" of high sea would be formed, which would be accessible only by passing through one or other of the entrances, and there would be a territorial waters belt.

It would perhaps be wise, however, to avoid this consequence, which, in my opinion, will not prove in any way advantageous. On the contrary, the creation of this kind of enclave of open sea might give rise to undesirable complications and even to abuses. I therefore propose that the Committee should not adopt this addition, but should leave Basis No. 15 as it stands.

Sir Maurice Gwyer (Great Britain):

I recognise the force of what Vice-Admiral Surie has said, and I should like to consider the question further. There are, I think, very few places in the world where this rule would apply, and one at least is regulated already by Convention. The other, I think, is in the extreme south of South America.

Without at the moment formally withdrawing the amendment which I have proposed, I should like to consider the matter further, and possibly Vice-Admiral Surie will permit me to have a few words of conversation with him.

Mr. Miller (United States of America):

I merely wish to explain that, in the amendments of a technical nature proposed by the delegation of the United States, there are certain paragraphs which refer to Bases of Discussion Nos. 15, 16 and 17. I do not wish to enter into any discussion of them, but merely to ask that they be referred to the Technical Sub-Committee which I understand is to consider these Bases, so that they may be dealt with at the same time.

Viscount Mushakoji (Japan):

Translation: I agree with Mr. Miller that the question should be referred to the Technical Sub-Committee.

The Japanese delegation proposes a slight amendment to Basis No. 15. The reason for

it is that, in order to bring straits into line with bays, the maximum width of the entrance should be fixed at ten miles. This amendment as well will, of course, I assume, be referred to the Technieal Sub-Committee.

M. Meitani (Roumania):

Translation: I have only a simple statement to make. Whatever final wording is deeided upon for these articles by the Drafting Committee, my Government understands that these provisions shall not apply to straits governed, in prineiple, by speeial Conventions. I have in mind partieularly the Bosphorus and the Dardanelles, whieh are regulated by the Straits Convention. I should like this statement to be mentioned in the reeords.

Dr. Schücking (Germany):

Translation: I wish first of all to second the British amendment to Basis No. 15, but I should also like to make one observation on that Basis.

On the oceasion of the discussion of Basis No. 2, I reserved the right to revert to the question of flying over straits. We gave the eoastal States sovereignty over the air-spaee above the territorial sea, without ereating a *servitudo legalis* in favour of aircraft. The eonsequenees, however, are quite unaceeptable, beeause Basis No. 15 regards the waters of the strait as territorial waters. An aireraft eannot use the strait as a means of communieation, whereas any ship whatever may pass through it.

I may refer to the regime governing the Straits of Constantinople, which was established by the Treaty of Lausanne. In the Convention regarding those Straits, aircraft were completely assimilated to ships. They are even allowed to fly over a strip of land as well. This case is a very important one.

When the statute of the Straits was drawn up, it was felt necessary to mention air navigation. For that reason, I ask that, if we are now to regulate the legal status of straits, we should also settle the question of flying over straits.

Some countries, parties to the Paris Convention on Aerial Navigation, are perhaps not greatly eoneerned in this question. There are other States, however, whieh are not parties to that Convention. Further, straits are important routes of communication. They are of so speeial a eharaeter that, in my opinion, we must grant passage through them to all traffie, and in partieular to aircraft. I reserve the right to propose a formal amendment on this question to the Legal Sub-Committee.

M. Spiropoulos (Greeee):

Translation: The Rapporteur has said that the Sub-Committee has laid down that the passage of warships would be allowed as a general rule through territorial waters. The Greek delegation would have preferred to go further, and, in order to be more preeise, to say " in prineiple, passage will be allowed ". It seems to me that the words " as a general rule " say nothing new.

What is important to know is whether, at any given moment, a State possessing warships has or has not the right to send them through straits. Without intending in any way to eritieise the solution ehosen, I eannot help thinking that it really says nothing at all. I should have preferred warships to be given the right to eross straits in virtue of freedom of eommunieations.

Obviously, in the ease of territorial waters where there is no strait, warships have no need to pass through those territorial waters. Where a strait has to be traversed, however, there is no other possibility but to pass through the territorial waters. If we allow the eoastal State the power to forbid passage in eertain cases, such a measure eonstitutes, I think, a serious restrietion to navigation.

As regards flying over straits, the Greek delegation supports Dr. Schücking's proposal.

I venture to remind you of the solution provided for this problem by the Convention establishing the Regime of the Straits. It seems to me that we must adopt the same principle and assimilate aireraft to ships. When we diseussed innocent passage through territorial waters, two questions arose, the interest of the eoastal State and freedom of navigation. It seems to me that, in this case, there is no risk in assimilating airships and aeroplanes to sea-going vessels, sinee the Convention to be coneluded applies only in time of peaee.

M. Giannini (Italy):

Translation: I wish first of all to say that the Italian delegation eonsiders that Bases Nos. 15 and 16, as submitted by the Committee of Experts, are such as may well be adopted, and it does not support any of the proposed amendments.

Further, the Italian delegation ventures to draw the Committee's attention to the faet that, as a general rule, all straits which are of general coneern to world shipping are already governed by speeial regulations.

It is not, I think, our intention to supersede these special Conventions by a general rule. Aecordingly, I think that our Roumanian colleague's objeetion would be met if we stated in the Convention that special agreements will not be affeeted. I even venture to say that no general rule could be eontemplated. Every strait whieh is of great importanee to world shipping must have speeial detailed regulations of its own to govern it.

I now eome to the third question, to whieh I referred briefly at another meeting, in order to draw the Committee's attention to the problem raised by Dr. Sehüeking. With the Committee's permission, I will explain the situation in a few words.

The German delegate who was present when the Paris Convention was revised asked that

the question of flying over straits should be placed on the agenda. In an article regarded as expressing the German Government's wish, it was proposed that the rules adopted should be those laid down in the Straits Convention of Lausanne.

In the course of the discussion which took place, M. Alvarez, the Chilian delegate, said that, if the two shores of a strait belonged to one and the same country, the question did not arise, as the strait would necessarily be regarded as the territory of that country.

I observed to the German delegation that it was not possible to adopt the Lausanne Convention as a basis, because it dealt with so many special cases that it could not be taken as establishing a general rule.

I also said that, if the waters of a strait belonged to one and the same country, they must be regarded as forming an integral part of its territory. I added, however, that, if various parts of the waters of a strait belonged to more than one State, the governing principle should be that of freedom of navigation.

I submitted the following wording :

" Flight over straits the waters of which belong to two or more States shall be free."

The German and British delegates accepted this proposal. Subsequently, however, as I had occasion to point out. Air Vice-Marshal Sir Sefton Brancker, first delegate of Great Britain, observed that the question was on the agenda of the Conference for the Codification of International Law, and that it would be well to await the results of that Conference.

The problem was postponed for reasons of procedure ; but I took care to draw our British colleague's attention to the fact that the question submitted to the Conference had nothing to do with the problem of air navigation, and that the rule of freedom of air navigation could not be regarded as a consequence of whatever might be decided upon here.

Is the question of any importance from the point of view of maritime navigation? It is the central problem which we must examine, and that has no connection with air navigation.

We must, I think, concern ourselves solely with maritime navigation, since we have not to consider here any aspect of flying. Air navigation is quite another problem.

We have regarded the air-space above territorial waters simply from the point of view of a consequence of the general principle, but as entirely unconnected with maritime navigation.

What does Basis No. 15 submitted by the Preparatory Committee say?

" When the coasts of a strait belong to a single State and the entrances of the strait are not wider than twice the breadth of territorial waters, all the waters of the strait are territorial waters of the coastal State."

My conclusion is that we should set aside the question of flying over straits, and should accept the Basis of Discussion as proposed by the Committee of Experts, and reject the proposed amendments.

The rules laid down in the Basis of Discussion have really been well thought out and, moreover, are designed in the interests of peace.

There is only one problem which calls for comment, and to which, indeed, several delegations have referred : I mean the problem of a strait the entrance of which is not more than twice the breadth of territorial waters but the interior of which comprises a zone of open sea. What would the situation be then? What is the practical importance of declaring a small area of water enclosed within territorial waters to be open sea ?

I think we must abide by Basis No. 15, since the few existing cases in point are already governed by special Conventions.

M. Spiropoulos (Greece) :

Translation : The Italian delegate has just set aside the question of the legal status of enclaves between the territorial waters of a strait, on the ground that special Conventions may exist governing them. I have a map before me with the Sea of Marmora, which lies between the Bosphorus and the Dardanelles. Is that sea an enclave of this kind or not? Its regime is regulated by the Convention of Lausanne, but that Convention does not explicitly lay down its legal status.

We must decide here how we propose to regard the legal status of the area of water known as the Sea of Marmora. We cannot leave the question unsettled, as the Italian delegate suggests.

M. Sjöborg (Sweden) :

Translation : The Swedish delegation fully agrees with what the Italian delegate has said to the effect that the question of flying over straits should be excluded from the present Convention.

The Swedish delegation considers that, generally speaking, questions relating to air navigation lie outside the scope of the present Convention and must be dealt with by the special Conference which is concerned with air navigation.

I will take this opportunity to refer to the amendment proposed by the Swedish delegation in regard to Basis of Discussion No. 16.

In its observations on Article 16, the Preparatoty Committee says that the rules it proposes do not affect different arrangements established by treaty so far as concerns States bound by those arrangements. The idea expressed in this statement by the Preparatory Committee seems to me very sound. What, in fact, is the object of the present Conference?

It is to fix the lines of demarcation, not between the territorial waters of the various States, but between waters which must be

regarded as territorial on the one hand and the high sea on the other.

It would, therefore, be quite illogical for our Convention to bring about any modification of existing frontiers between two or more States. Unfortunately, this very definite idea of the Preparatory Committee's is expressed somewhat unsatisfactorily in Basis No. 16, which reads ;

> " When two States border on a strait which is not wider than twice the breadth of territorial waters, the territorial waters of each State extend *in principle* ", and so on.

We must avoid these expressions " in principle " " in general ", etc. They are really out of place in a Convention ; they may cause almost insurmountable difficulties as regards interpretation. We must, therefore, substitute for the words " in principle " in Article 16 a term which clearly and accurately expresses the very definite idea of the Preparatory Committee. That is the object of the Swedish amendment, which omits those two words and substitutes for them a new paragraph to be added to Basis No. 16.

I believe, too, that the United States delegation has submitted an amendment in the same sense, though wider in scope, and I could accept that amendment. The United States delegation's amendment reads as follows :

> " Nothing herein contained shall limit or affect any treaty or agreement now in force, to which any party hereto is a party."

If the Committee accepts the United States delegation's amendment, our own will fall through, except for a few slight drafting changes to be introduced in the final text.

Sir Maurice Gwyer (Great Britain) :

I think the remarks of the Swedish delegate are sound, and that the words " in principle " should be omitted from this Basis. I do not think they add anything to its force, and they may possibly give rise to misunderstandings in the future.

With regard to the last paragraph of the Swedish amendment, I assume that there will be some general article covering the whole Convention and safeguarding the existence of all existing and future Conventions. In that case, the Swedish delegate himself has said, I think, that this sentence will not be required.

M. Novakovitch (Yugoslavia) :

Translation : The Yugoslav delegation agrees with what M. Giannini has said in regard to Basis No. 15. It thinks that the wisest solution — and the one which probably will most easily obtain unanimous acceptance — is to leave Basis No. 15 as it stands. If we attempted to give actual figures for the breadth referred to in Basis No. 15, we should, in my opinion, be prejudging a question which has not yet been settled by the Committee.

I also agree with M. Giannini in regard to the question of special status in certain cases. In this connection, we must simply lay down general principles, more particularly since special cases are governed by special Conventions which will undoubtedly remain in force and will in no way be affected by the Convention we are drawing up.

In the cases of the Straits of Constantinople, the Sea of Marmora, the Isthmus of Suez and the Kiel Canal, special treaties already exist. If there are cases which concern traffic in general and are not yet settled by special Conventions, the States interested will certainly reach a settlement if they should think it necessary.

I agree with M. Sjöborg that Basis No. 16, should be retained, with the change he proposes. If I understand his amendment aright, it is to substitute for the words " in principle " the words " apart from the exceptions provided for by special treaties ".

M. Raestad (Norway) :

Translation : Basis of Discussion No. 16 assumes — what is not necessarily true — that the breadth of the territorial waters is the same on both coasts. According to Basis No. 4, could some States have territorial waters the breadth of which exceeds three miles? There is the Sound, where one of the two States concerned claims a breadth of four miles, while the other is content with three.

This difficulty, it is true, would not exist under the United States amendment ; but that amendment presents other difficulties.

We must also consider the case where the two States concerned do not share the strait equally. Conceivably, each might be content with less than half, in order to leave a central channel of open sea.

I think that Basis No. 16 would be more in place in a special Convention and is less suited to appear in a general Convention. I will not enter into an exhaustive discussion of the question ; I simply wanted to point out that I felt some doubts on the subject, and that it would perhaps be desirable for the Legal Committee to examine the expediency of inserting this Basis.

M. Lorck (Denmark) :

We support the Italian and Swedish proposal to eliminate from the discussions of this Conference the question of aircraft flying over straits.

The Danish delegation has some small amendments to propose to Basis No. 15. They are intended only to draw attention to the fact that the narrowest places in a strait need not be at the entrances but may be anywhere in the strait, and, so far as the question of territorial waters is concerned, I suppose it is these narrow places in the strait which are to be taken into consideration.

Between these narrow places there may be some wider areas which are more than twice the breadth of territorial waters, but the intention is that these shall be considered territorial waters. This is not a new departure; it corresponds to the present situation, but is not in harmony with the British amendment to this Basis. The British amendment, as has already been said, will produce isolated areas of non-territorial waters, entirely surrounded by territorial waters.

We have also some amendments to Basis No. 16. In the first place, there is an amendment dealing with the case where more than two coastal States border on a strait. That is merely a question of wording. The next amendment is designed to bring Basis No. 16 into conformity with the principle laid down in Basis No. 15, namely, that waters lying between two narrow places in a strait are territorial waters. Finally, there is a small amendment to draw attention to the calculation of territorial waters where there are bays and islands in a strait. It is nothing new, but is designed only to make the text clear in the case of straits having bays and islands.

The Chairman:

Translation: I think we agree that Bases Nos. 15, 16 and 17 must be referred to the Technical Sub-Committee, with the amendments submitted by the Japanese, British and Swedish delegations and those mentioned by the Danish delegation. The technical amendments of the United States delegation should also be referred to that Committee.

The Sub-Committee will have to consider, in particular, how the Conventions which have been, or any which may be, concluded are to be reserved. In this connection, the question raised by M. Raestad must be particularly examined, namely, whether the subject of Basis of Discussion No. 16 should or should not be left to the coastal States of a strait.

The question has been raised by M. Spiropoulos whether we ought not to reconsider the Legal Sub-Committee's formula regarding the passage of warships through straits. I think that question should be studied by the Legal Sub-Committee.

Lastly, there is the question of flying over straits, in regard to which opinion is divided. I think, however, that the majority is of opinion that our Committee and our Conference must not take up this question, but that it should be studied on some other occasion.

M. Gidel (France):

Translation: If I understand aright, the Committee is to consider whether the question of flying over straits should be taken up. I should like to be quite clear on that point.

The Chairman:

Translation: My impression is that opinion is divided as to whether our Committee should or should not take up this problem, or whether it should not refer it to another conference. I think, however, that the majority is in favour of referring it to another conference.

M. Gidel (France):

Translation: In that case, the French delegation would prefer the question to be examined, at all events, in committee. It agrees with the view expressed by Dr. Schücking and M. Spiropoulos.

M. Raestad (Norway):

Translation: Can we not take a vote on this question?

The Chairman:

Translation: I will put to the vote the question whether the Committee should deal with the problem of flying over straits. The vote will also involve a question of procedure, because, if the Committee thinks it must take up this question, the question will be referred to a Sub-Committee, and we must decide which Sub-Committee.

M. Gidel (France):

Translation: I suggest Sub-Committee No. 1.

The Chairman:

Translation: We will vote on both the following questions: must we deal with the question and must we refer it to Sub-Committee No. 1.

The Committee decided by eighteen votes to six not to deal with the question of flying over straits.

The Chairman:

Translation: The Committee has decided by a majority not to deal with this question. It is therefore reserved for a subsequent occasion. The Committee may perhaps recommend that it should be settled in the near future.

As no one has any observations to make in regard to my other proposals, I take it that the Committee accepts them.

Agreed.

25. — BASIS OF DISCUSSION No. 19: REFERENCE TO THE LEGAL SUB-COMMITTEE.

The Chairman:

Translation: The Swedish proposal regarding Basis of Discussion No. 19, which deals with free passage in inland waters, is referred to the Legal Sub-Committee, which will deal with it in due course.

The United States delegation's proposals, comprised in Document No. 19, are referred to the proper Sub-Committees; that is to say, paragraphs *(a)*, *(b)* and *(d)* are referred to the Legal Sub-Committee and paragraphs *(c)* and *(e)* to the Technical Sub-Committee.

The above proposals were adopted.

The meeting rose at 12.30 p.m.

THIRTEENTH MEETING

Thursday, April 3rd, 1930, at 9.15 a.m.

Chairman : M. GÖPPERT.

26. BASES OF DISCUSSION Nos. 3, 4 AND 5.

The Chairman :

Translation : At the beginning of our work we considered Bases Nos. 3, 4 and 5 at some length. Wide differences of opinion between the various countries were revealed in regard to the breadth of the territorial waters and the adjacent waters. We have not lost sight of the problem, and to-day the Committee is to take a decision on it.

We must reach an agreement, because otherwise we should have entirely failed to do what was expected of us.

M. Giannini (Italy) :

Translation : At the first stage of our work we discussed at some length the problems on which we have to-day only to take a decision.

What is the outcome of all our discussions?

Several proposals to fix the limit of territorial waters at twelve miles, six miles, three miles, and one to fix it at four miles.

The principle of a six-mile limit or, to be more exact, the principle of " not three miles ", is supported by many countries.

We have discussed at great length the reasons which, in our opinion, necessitated the acceptance of this compromise as the only one which can reconcile national requirements with freedom of navigation.

We also showed, I think, that, if six miles were adopted, the so-called adjacent zone would lose a great deal of its importance.

Further, certain States have defended the three-mile limit in a manner which I will venture to call dogmatic ; that is to say, as being an absolute truth that cannot be gainsaid. It must be admitted, however, that it was hardly shown why the three-mile principle must be preferred to the others.

To prolong the discussion would be quite useless, because persuasion will do little in this matter. Do not, therefore, let us vie with each other in eloquence, and I myself will avoid setting a bad example at the beginning of this meeting.

What are we going to do? I propose that we take a vote at once in order to see which States will not accept a breadth of three miles. When we find what the result of the vote is, we shall be able to discuss how the matter is to stand.

I think that, in the circumstances, it is not enough to take a simple vote and say, for example, ten for and fifteen against, or fifteen for and ten against, and for that reason I ask for a vote by roll-call.

Our colleague of the Portuguese delegation is, I think, in favour of a six-mile limit. His amendment to Basis of Discussion No. 3, being that furthest in substance from the Preparatory Committee's wording, must be put to the vote first, according to our Rules of Procedure, and, as I said before, by roll-call.

After this vote we shall see what consequences may be deduced, and we may approach the other problem, which concerns other States; I say other States because, as regards the conception of the adjacent zone, we are agreed only upon the term itself. What is the adjacent zone? No one yet really understands. It is, I think, a zone in which certain rights will have to be held. But what are these rights?

Here, every delegation looks at the problem in the light of its own ideas, and I was, and am still, impelled to believe that this zone really amounts to a kind of disguised territorial waters zone.

In any case, as regards this second question, we must reserve any decision until we know how we stand in regard to the first.

I will ask the Chairman, if the Committee agrees, to proceed to the vote by roll-call.

M. Spiropoulos (Greece) :

Translation : If I interpret aright what M. Giannini has said, he proposes that we should not settle the question of principle at once. We should simply ascertain how many delegates are in favour of the three-mile limit and how many in favour of the six-mile limit. If my interpretation is correct, I will second M. Giannini's proposal.

M. Makowski (Poland) :

Translation : During the general discussion itself, I observed that it was really difficult to discuss the breadth of territorial waters adequately without first defining as closely as possibly what is the adjacent zone. For that reason, I propose that we reverse the order of the discussion and take Basis No. 5 first and then Bases Nos. 3 and 4.

M. Gidel (France) :

Translation : The French delegation supports the Polish proposal.

M. de Angulo (Spain) :

Translation : The Spanish delegation seconds M. Giannini's proposal.

The Chairman :

Translation : We have before us two proposals, that of M. Giannini and that of M. Makowski. We must decide whether we want to discuss the question of the adjacent zone first or whether we want to ascertain the position of the various Powers in regard to the breadth of the territorial waters.

M. Giannini (Italy) :

Translation : I think my proposal should be be voted upon as having been made first.

M. Spiropoulos (Greece) :

Translation : I understand the object of M. Giannini's proposal is to show how many delegates are in favour of the three-mile system and how many are in favour of the six-mile system, without prejudice to other questions.

Sir Maurice Gwyer (Great Britain) :

What does M. Giannini suggest that we should do after we have voted?

M. Giannini (Italy) :

Translation : This vote will enable us to obtain an exact idea of the situation. We could then deduce the consequences. Proposals in the nature of a compromise might be made, or we might proceed to consider the question of the adjacent zone. A vote is necessary, however, to obtain guidance and to know the general trend of opinion in the Committee.

M. de Magalhães (Portugal) :

Translation : If I understand M. Giannini aright, he proposes a provisional vote with the sole object of affording guidance to the Committee. It is understood that we may then open a discussion and, if necessary, endeavour to find a compromise. On that understanding, I will vote for M. Giannini's proposal.

M. Raestad (Norway) :

Translation : I should like to explain why M. Giannini's proposal places me in a difficulty from which I can see no way out. The question of the six-mile limit has different aspects. In the first place, it may be asked whether, according to international law, States can adopt such a limit, in so far as they are not bound by Conventions or otherwise.

In the second place, there is the historical aspect. I consider I have not the necessary information to ascertain whether any given State has the right, by usage, to claim a six-mile limit.

Lastly, from the standpoint of practical utility, I strongly doubt the desirability of embodying the six-mile rule in a Convention on international law.

If the Committee takes a vote on M. Giannini's proposal, I shall be obliged to abstain. In my opinion, we should first take a vote on the three-mile limit.

M. Giannini (Italy) :

Translation : A vote will be taken first on the amendment.

M. Raestad (Norway) :

Translation : Then we must be quite sure what the amendment is.

Mr. Miller (United States of America) :

I rise to ask a question on a point of order, because I confess that I do not quite understand the proposal to vote on the question of six miles or three miles, and I think it should be made perfectly clear before it is decided whether or not such a vote is to be taken. When it is said, for example, that a vote is taken made in favour of six miles — in favour of six miles where? Does a State that votes for six miles vote for six miles on the coast of the United States of America? Or does a State that votes for six miles vote for six miles simply along its own coast? Or does it vote in an intermediate sense for six miles along its own coast and in some other localities? Or does it, perchance, vote for six miles in some particular region which is not its own coast? It seems to me that that point must be made clear before any vote can be taken.

Sir Maurice Gwyer (Great Britain) :

It seems to me that the observations and questions of Mr. Miller are most just, and that the Committee ought to be informed by the proposer of this motion what exactly his intention is, because I myself share the doubts which have been expressed by Mr. Miller, and it seems to me also that the proposition means that we shall vote on the subject first and discuss it afterwards. If we are to vote on these subjects, in whatever order they are taken, surely the discussion should precede the vote rather than follow it.

M. Giannini (Italy) :

Translation : After I have spoken for the third time I hope I shall have succeeded in making myself clear.

If a right exists, in what does it consist and what are its consequences? I did not want the Committee to take a final vote on that. I did not mean that, if we vote in favour of six miles, we intend to approve Basis No. 3. For that very reason. I did not say that I recommended the adoption of Basis No. 3, which states that the breadth of the territorial waters under the sovereignty of the coastal State is three miles. I simply said that, in order to ascertain the trend of opinion in the Committee, we must know what States cannot accept the three-mile limit. We shall then see what must be done to reach an agreement. The British delegate

will perhaps accept this suggestion of mine in order to save time.

When I know how matters stand in this respect — in other words, when we have finished discussing the subject — I shall also know what the outcome of the discussion may be ; but if we begin to discuss the problem now I do not know what line the Committee will take. We should be repeating what we said at previous meetings. What I want — and in this I approve the Portuguese delegate's view — is a provisional vote on the principle involved and not on the Basis. Then, if we agree to continue the discussion, we can no doubt arrive at a compromise ; whereas, if we ask ourselves whether a right exists, what that right is and so on, I do not think we shall reach agreement at all, because it is impossible to solve these purely theoretical problems. Moreover, I see no practical use in such a discussion. It would waste another two or three days, at the end of which we should still be in the same impasse.

M. Novakovitch (Yugoslavia) :

Translation : I should like to give a few words of explanation on my vote. I have no intention of opening a discussion ; I agree with M. Giannini that we must take a vote.

The Yugoslav delegation will vote for the six-mile limit, as I said at the outset of our work. It will do so partly for special and partly for general reasons. We are in favour of the six-mile limit because we think that the situation will be clearer if we adopt a greater width for the territorial sea — that is to say, six miles — and abolish the adjacent zone. We are opposed to the existence of such a zone. We do not see the necessity of having an adjacent zone in addition to the territorial sea. That is one of the reasons why we are voting in favour of the six-mile limit.

The Chairman :

Translation : In my opinion, the Committee must first decide the point of order raised by the Polish delegation and seconded by the French delegation, namely, whether we are to discuss the breadth of territorial waters first or whether we are to begin with the adjacent zone.

M. Sjöborg (Sweden) :

Translation : I agree with M. Giannini as to the desirability of taking a definite line in our work, but we cannot do so unless we have reached a decision regarding the three-mile rule. If we take a vote, those who want the three-mile rule to be compulsory for all countries will have to take one side, and those who do not want the three-mile rule to be compulsory for all countries will take the other side.

That is my proposal, and I think M. Giannini will agree with it.

M. Rolin (Belgium) :

Translation : I am certain that many of us would like to see the end of this discussion on the method we are to adopt. I think that, even if we have preferences in the matter, we should follow the course indicated by the Chairman. I feel quite sure there are various methods of attaining our end ; all we have to do is to choose one of them. At present, the question has been raised whether it is desirable to see how our numbers stand before reaching an agreement on the breadth of territorial waters. That may take place later on, but various delegates have said that they would vote for or against M. Giannini's proposal because they support or oppose the notion of the adjacent sea.

We shall see later whether the majority of the Committee is in favour of that notion or not ; but it seems to me that it is a preliminary notion, and that the vote on the three- or six-mile limit might depend on it.

The Chairman has made a proposal. If the majority of the Committee is in favour of discussing the breadth first, we shall be able to return to M. Giannini's proposal ; but it seems to me most desirable that we should first take a decision on the Chairman's suggestion, namely, to ascertain whether there is any major objection to discussing the notion of the adjacent sea first.

M. Giannini (Italy) :

Translation : If we deal first with the adjacent sea, we shall be discussing in a vacuum. Those countries which have adopted a definite attitude will ask how they can examine a question which they regard as of secondary importance or as non-existent. We shall be discussing a question on which it will be very difficult to reach agreement without knowing the general line taken by the Committee. We must therefore know in advance what countries cannot accept the three-mile limit.

In order to expedite our work, I am willing to accept M. Sjöborg's proposal. If the Committee decides to begin with the adjacent zone we shall, I repeat, be discussing in a vacuum, and we shall remain at the deadlock which we have reached at present.

The Chairman :

Translation : In deciding on the question I have put to you, you will take into account what M. Giannini has just said.

M. Giannini (Italy) :

Translation : I claim the application of the Rules of Procedure. I have the right to ask you to put my proposal to the vote.

M. Novakovitch (Yugoslavia) :

Translation : I second M. Sjöborg's proposal. I think it is desirable for the guidance of our work that we should first take a decision for or against the three-mile limit.

The Chairman :

Translation : On this point of order, I should like to know the Committee's opinion. The

question that has arisen is whether we must first discuss Bases Nos. 3 and 4 or begin with Basis No. 5. We must take a decision on this question first; it is the subject of a Polish proposal, seconded by the French delegation, with the object of reversing the order of the Bases and beginning with Basis No. 5. I think this question must be settled before we can take a vote to ascertain the attitude of the various delegations towards the breadth of territorial waters.

My attention has been drawn to an article of the Assembly's Rules of Procedure which will guide us in this matter. It states that, if two proposals have been submitted, the proposal furthest removed in substance from the principal one shall be voted on first. The principal proposal here is to discuss Basis No. 3. The aim of the Polish proposal is to begin the discussion with Basis No. 5.

M. Giannini (Italy):

Translation: Basis No. 3 speaks of three miles; the proposal which is furthest from three miles is in favour of six miles.

M. Gidel (France):

Translation: The question of the adjacent zone is still further from the principal proposal.

The Chairman:

Translation: I propose that we vote on the question whether we shall begin by studying Basis No. 5, according to the Polish proposal, or by discussing the adjacent zone.

Vice-Admiral Surie (Netherlands):

Translation: Our delegation cannot take a decision on the adjacent zone without knowing what the breadth of the territorial waters will be; otherwise it will be obliged to vote against.

The Chairman:

Translation: I put the Polish proposal to the vote.

The proposal was rejected by fifteen votes to eight.

M. Rolin (Belgium):

Translation: I assume that we shall agree not to state the question in a narrow form; that is to say, for or against the three-mile limit. That would not give us any guidance. Various delegations have said that the problems of the adjacent sea and the breadth of the territorial sea go together. Some will refuse to take a decision on the first point so long as the second has not been settled, and, conversely, others will not come to a decision on the second before knowing what has been decided for the first. In these circumstances, I ask that we combine the two suggestions and ascertain which delegations prefer three miles, which four miles and which six, with or without the adjacent sea in each case, and even with the possibility of voting for a greater breadth. In other words, let us find out how we stand positively, so that we shall know where we are. This solution will have the advantage that we shall know the position more clearly than if we simply voted for or against the three-mile limit.

The Chairman:

Translation: M. Rolin has submitted an amendment to M. Giannini's proposal, and asks that our vote should aim solely at ascertaining the position of the various delegations. In order to meet Mr. Miller's suggestion, each delegation would indicate what rule it would like to be compulsory for all. We might follow this suggestion of M. Rolin, as we should know more fully and more accurately the position of the various delegations. There would then be six votes.

M. Giannini (Italy):

Translation: Are we going to waste the whole morning in voting?

M. Meitani (Roumania):

Translation: The Committee has several proposals before it. There is first of all the extreme proposal of M. Giannini, who asks for a vote solely as an indication of our views on the three-mile or six-mile limit. Then there are six consecutive proposals, because the Belgian delegation's proposal represents six or even eight, for some countries will perhaps prefer more than six miles of territorial sea. The primary question is to know whether we are in favour of three miles or six miles. We may then discuss whether there should be an adjacent sea or not.

For the moment, we are concerned with a matter of principle and not of detail. The Belgian delegate's proposal is concerned with details, whilst the Italian delegate's raises a question of principle. The Committee must, therefore, decide first on the matter of principle and afterwards on the questions of detail with which the Belgian proposal deals.

M. Spiropoulos (Greece):

Translation: The Greek delegation at first supported M. Giannini's proposal, for the reasons that were adduced.

Now, however, we have before us an amendment submitted by M. Rolin. We must, therefore, find what is the most practical solution to be adopted in the interest of the Committee's work.

I must confess that, fundamentally, M. Rolin's amendment is preferable, and is really more in accordance with the Committee's ideas. Some delegations are in favour of accepting a certain breadth of territorial sea and a certain other breadth of adjacent sea. Let us give them an opportunity of stating their position. I therefore propose that we accept M. Rolin's amendment, which, combined with M. Giannini's idea, best meets the wishes of all.

M. Giannini (Italy) :

Translation : That will be of no use.

M. Spiropoulos (Greece) :

Translation : Yes, it will. I myself supported your proposal, but I did not then know of M. Rolin's amendment. This amendment enables us to take a decision on all the variations of the problem, and to say whether we accept such and such a breadth of territorial sea and such and such a breadth of adjacent zone. We should therefore give preference to that amendment.

Sir Maurice Gwyer (Great Britain) :

I have listened to this discussion and I have endeavoured to ascertain exactly what the purpose of the proposal, which I understand to be now before the Committee, really is. I regret to say I have failed to understand it, and, in those circumstances, I propose not to vote upon it at all.

Viscount Mushakoji (Japan) :

Translation : I, too, find it rather difficult to understand. Are we taking a final vote — there would be some meaning in that — or a provisional vote?

Moreover, I should like to know what is meant by an exchange of views after the vote. If we are simply to ascertain how the States are divided, that will hardly serve to guide us ; rather the contrary.

I think it would be better not to take a vote now, as the various countries are sufficiently sharply divided already. If we take a vote we shall be no further advanced afterwards, and for that reason I oppose M. Giannini's proposal.

The Chairman :

Translation : I propose that the Committee should take a vote immediately on Viscount Mushakoji's suggestion.

The Committee decided by eighteen votes to fourteen to continue the discussion without a vote.

Viscount Mushakoji (Japan) :

Translation : I do not think that we should vote. I think, however, that M. Giannini is right in this sense, that it is desirable to know the views of the different delegations. I propose, therefore, that each delegation should in turn state its attitude on this question without any vote being taken, and merely in a few words what its attitude is.

The Chairman :

Translation : I think Viscount Mushakoji's proposal is an excellent one.

M. Gidel (France) :

Translation : It is to be understood that this is to be a provisional expression of opinion. It is not a categorical or final declaration of our attitude. Each delegation will announce its position in principle.

The Chairman :

Translation : I quite agree with what M. Gidel says, and the views expressed must be interpreted accordingly.

Mr. Lansdown (Union of South Africa) :

I beg to express my view in favour of Basis No. 3 as printed, that the breadth of territorial waters should be three nautical miles.

Dr. Schücking (Germany) :

Translation : The German delegation is in favour of the three-mile rule, together with the existence of an adjacent zone, in the hope that the acceptance of the principle of the adjacent zone may facilitate the acceptance of the three-mile rule by other countries.

Mr. Miller (United States of America) :

I will read one sentence which is contained in various existing treaties of the United States:

> " The High Contracting Parties declare that it is their firm intention to uphold the principle that three marine miles extending from the coastline outwards and measured from low-water mark constitute the proper limits of territorial waters."

M. de Ruelle (Belgium) :

Translation : We accept the three-mile rule, together with a zone of adjacent waters.

Sir Maurice Gwyer (Great Britain) :

The British delegation firmly supports Basis No. 3, that is to say, a territorial belt of three miles without exercise, as of right, of any powers by the coastal State in the contiguous zone, and it does that on three grounds, which I will express in as few words as I can. First, because in its view the three-mile limit is a rule of international law already existing, adopted by maritime nations which possess nearly 80 per cent of the effective tonnage of the world ; secondly, because it has already, in this Committee, adopted the principle of sovereignty over territorial waters ; and, thirdly, because the three-mile limit is the limit which is most in favour of freedom of navigation.

I ought to add that, in this matter, I speak also on behalf of His Majesty's Government in the Commonwealth of Australia.

Mr. Pearson (Canada) :

The Government of Canada is in favour of the three-mile territorial limit for all nations and for all purposes.

M. Marchant (Chile) :

Translation : The Chilian delegation will accept six miles as the breadth of territorial waters without an adjacent zone, or three miles with an adjacent zone.

M. W. Hsieh (China) :

Translation : The Chinese delegation accepts the Basis of Discussion No. 3 in principle.

M. Arango (Colombia) :

Translation : I am in favour of the six-mile limit.

M. de Armenteros (Cuba) :

Translation : The Cuban delegation is against Basis No. 3. I pronounce myself in favour of six miles with an adjacent zone.

M. Lorck (Denmark) :

Translation : We are, in principle, in favour of Basis of Discussion No. 3 ; but, as the rules concerning bays are very unsettled and the question of bays is of great importance to Denmark, it is impossible for me to give a definite decision at the moment.

Abd el Hamid Badaoui Pasha (Egypt) :

Translation : We are in favour of three miles territorial water, together with an adjacent zone.

M. de Angulo (Spain) :

Translation : In accordance with its amendment, the Spanish delegation is in favour of six miles territorial water, together with an adjacent zone.

M. Varma (Estonia) :

Translation : The Estonian delegation wishes for three miles territorial water and an adjacent zone.

M. Erich (Finland) :

Translation : For reasons of solidarity with its neighbours, the Scandinavian States, the Finnish delegation favours a zone of four miles for territorial waters, provided an adjacent zone of sufficient width is granted to her at the same time. In the latter case, the Finnish delegation could also accept a three-mile zone, but primarily it favours a four-mile zone. If, contrary to expectations, the majority of the Commission did not pronounce in favour of an adjacent zone, the Finnish delegation reserves the right to come back to this question and to take a different attitude regarding the width of territorial waters.

M. Gidel (France) :

Translation : France has no objection to the acceptance of the three-mile rule, provided that there is a belt of adjacent waters, and subject to the rules which may be agreed to in regard to the method of determining the datum-line of the territorial belt.

M. Giannini (Italy) :

Translation : May I ask my French colleague the meaning of the reservation he has made?

M. Gidel (France) :

Translation : I will explain myself more fully on a subsequent occasion, as I would not wish to prolong this process of voting. I thought, however, that I had made my meaning sufficiently clear. We desire an adjacent zone, and we accept the three-mile limit, provided that a solution satisfactory to us is arrived at with regard to the datum-line of the territorial belt.

M. Spiropoulos (Greece) :

Translation : The Greek delegation has already stated that it accepts the three-mile rule. It would even be prepared to accept two miles in the interests of the freedom of navigation if all States were prepared to accept it. As it has already accepted the three-mile limit and the principle of sovereignty, the Greek delegation considers that no adjacent zone is necessary. However, as there are some countries which desire a greater extent than three miles of territorial waters, they would even be prepared to accept an adjacent zone, particularly as Greece, according to the legislation at present in force, already possesses one.

Sir Ewart Greaves (India) :

The Government of India accepts Basis No. 3.

Mr. Charles Green (Irish Free State) :

The Government of the Irish Free State accepts Basis No. 3 as printed, but recognises that, in certain countries and for certain purposes, there are requirements of the nature set out in Basis No. 5.

M. Björnsson (Iceland) :

Translation : The Icelandic delegation accepts four miles.

M. Giannini (Italy) :

Translation : Six miles.

Viscount Mushakoji (Japan) :

Translation: The Japanese delegation accepts the three-mile limit without an adjacent zone.

M. Albat (Latvia) :

Translation : The Latvian delegation accepts six miles with an adjacent zone.

M. Raestad (Norway) :

Translation : As there is no binding rule of international law on this question, the Norwegian Government considers that it is necessary to take into consideration the requirements of the different countries. The delegation pronounces in favour of the limit of four miles ; that rule is older than the three-mile rule.

With regard to other countries, the Norwegian Government would be prepared to recognise a greater width of territorial waters provided, as is stated in the Norwegian Government's printed reply, that the demand was based on continuous and ancient usage.

With regard to adjacent waters, they must be limited by the needs regarding Customs and security.

Vice-Admiral Surie (Netherlands) :

Translation : The Netherlands delegation cannot give an opinion on the question of adjacent waters until it is informed what rights will be involved. It is, however, prepared to accept Basis No. 3 as regards the breadth of the territorial waters, which it accepts at three miles.

It bases its decision, first, on the necessity of safeguarding the interests of commercial navigation on the high seas, and, secondly, on the consideration of not placing any too heavy obligations on the coastal State.

M. Sépahbody (Persia) :

Translation : The Persian delegation accepts the six-mile rule with an adjacent zone.

M. Makowski (Poland) :

Translation : The Polish delegation is in favour of a three-mile breadth of territorial waters, together with an adjacent zone sufficiently wide to enable the coastal State to protect its legitimate interests.

M. de Magalhães (Portugal) :

Translation : The Portuguese delegation has already said that it desires a territorial belt of twelve miles in width, but it is prepared to accept a belt of six miles provided there is an adjacent zone also of six miles in width.

The reason for the claim of a territorial belt of six miles is, first, because of the special position of Portugal on the continental plateau and its possession of fisheries which are vital to its interests ; and, secondly, for a general reason — that is to say, that the three-mile limit is inadequate, as is proved by the claims for adjacent waters which have been put forward by many other countries, some of them demanding a great and even unlimited width for the adjacent zone.

It therefore accepts the six-mile belt, together with adjacent waters, and in those adjacent waters they demand to be accorded rights over certain matters and, in particular, police rights over fisheries such as have been recommended in all recent technical congresses.

M. Meitani (Roumania) :

Translation : The Roumanian delegation accepts a territorial belt of six miles and reserves its attitude on the question of adjacent waters.

M. Sjöborg (Sweden) :

Translation : The Swedish delegation desires a territorial belt of four miles in width, but recognises as legitimate the other historic belts at present in force in a certain number of countries ; that is, for example, three- and six-mile zones.

M. Sitensky (Czechoslovakia) :

Translation : The Czechoslovak delegation desires the greatest possible freedom of navigation, but, not having any coast-line, it considers that it should abstain from proposing a definite extent for the zone of territorial waters.

Chinasi Bey (Turkey) :

Translation : The Turkish delegation desires a six-mile belt of territorial waters with an adjacent zone.

M. Buero (Uruguay) :

Translation : The Uruguayan delegation desires a territorial belt of six miles and reserves its attitude on the question of adjacent waters.

M. Novakovitch (Yugoslavia) :

Translation : The Yugoslav delegation desires a territorial belt of six miles and reserves its attitude on the question of adjacent waters.

M. de Vianna-Kelsch (Brazil) :

Translation : The Brazilian delegation accepts a territorial belt of six miles for all purposes.

M. Egoriew (Union of Soviet Socialist Republics) :

Translation : If one takes into consideration the state of positive law at the present time, as it can be discovered in the legislation of the different States through treaties and diplomatic correspondence, it is necessary to recognise the great diversity of view which exists regarding the extent in which the exercise of the rights of the coastal State exists in the waters called territorial and adjacent. The exercise of such rights for all purposes or for certain purposes is admitted sometimes within the limit of three, sometimes four, six, ten or twelve miles.

The reasons, both historical and theoretical, invoked by some States and disputed by others, cannot be put into opposition to these facts and the rule or actual necessity for States to ensure their needs, particularly in waters along the coast which are not used for international navigation. This aspect, which has been already noted in the literature on the subject, as well as in debates in this Commission, cannot be overlooked.

Under these conditions, it would be better to confine oneself to a general statement to the effect that the use of international maritime waterways must under no conditions be interfered with.

The Chairman :

Translation : We now know the attitude of the various delegations. If you think we must reflect on the situation, we might usefully employ our time now by holding a meeting of the combined Legal and Technical Sub-Committees ; but perhaps you would prefer to continue the discussion at once.

Sir Maurice Gwyer (Great Britain) :

Are we going to discuss the question of the contiguous zone?

The Chairman :

Translation : Sir Maurice Gwyer proposes that we should now discuss the question of the adjacent zone, which, as we have seen from the attitude of the various delegations, played a great part in determining that attitude.

Sir Maurice Gwyer (Great Britain) :

I made my suggestion because I think that very few of the members of the Committee present hold the same view as to the nature of the rights to be exercised, if any are to be exercised, in adjacent waters, and I think one or two delegates reserved the question as to what those rights should be. I think this is a favourable opportunity for continuing the discussion on that point.

The Committee decided to discuss next the question of the adjacent zone.

27. BASIS OF DISCUSSION No. 5.

Viscount Mushakoji (Japan) :

Translation : The Japanese delegation wishes to say that, in its opinion, the desirability of studying the definition of adjacent waters presupposes that an extension of the coastal State's powers beyond its territorial waters is admitted as an exceptional procedure. As I have already had occasion to explain, my delegation is not in favour of such an extension.

The instructions which the Japanese Government gave us for this Conference compel us to maintain the principle it has always upheld, namely, that the breadth of the territorial waters must in no case exceed three nautical miles. As, however, we wish to be conciliatory and to understand the points of view of others, in order to help towards the successful issue of the Conference, we are prepared, while maintaining this view, to take part in a discussion on the question of a zone of adjacent waters. The Japanese delegation considers that the principle of freedom admits, in a part of the high sea, a strictly limited relaxation, which should not go beyond the exercise of Customs and sanitary powers, in so far as they are recognised by existing usages.

M. Sitensky (Czechoslovakia) :

Translation : The Convention we are to draw up should relate to a single zone, in which the coastal State would have specified powers. I wish, therefore, to oppose the acceptance of an adjacent zone. If certain States, for their own particular interests, require to extend their powers to a zone wider than that of the territorial waters, I think it may be done in a special Convention between the States concerned rather than in an international Convention.

Dr. Schücking (Germany) :

Translation : The German delegation fully agrees with the Japanese delegation's opinion in regard to the rights of the coastal State.

Sir Maurice Gwyer (Great Britain) :

His Majesty's Government, both in the United Kingdom and in Australia, holds the view strongly that no State is entitled to exercise rights outside the limit of its own sovereignty ; that is to say, beyond the territorial belt. It cannot, therefore, accept the principle of the contiguous zone in adjacent waters, in which such rights are to be exercised, not only on grounds of principle, but on grounds of practical necessity also, and for this reason. It is quite clear that the requirements of States differ all over the world. One State may require wider powers in a contiguous zone than another, but if the principle of the contiguous zone and the powers to be exercised in that zone as of right are once recognised, it is clear that the powers to be granted by this Convention would have to be wide enough to satisfy the State whose needs are the greatest. It is for this reason, which is a practical reason, that His Majesty's Government of the United Kingdom and the Commonwealth of Australia cannot accept this principle.

At the same time, it fully recognises that special and peculiar circumstances exist in the case of many States, and that it is in accordance with the comity of nations that one State should be prepared, so far as it can, to assist another State to prevent the subjects of a foreign State from breaking the laws of the coastal State. For that reason, my Government has been, and still is, prepared to enter into negotiations for a special Convention or treaty with any country which is able to show that such special conditions exist. The British Government has already concluded such treaties. It has concluded one with the United States of America ; and has indicated its willingness to conclude one, I think, with Finland, with a view to the suppression of the contraband traffic in alcohol. Wherever special circumstances exist in the case of any coastal State, the British Government is willing to act in a similar way. It does not feel able to go further than that.

M. Spiropoulos (Greece) :

Translation : As regards the regime of the territorial sea, we have decided upon the principle of sovereignty. We have thus safeguarded the interests of the coastal States, as far as possible, by assimilating territorial waters to territory. In so doing, we have safeguarded the States' rights of defence and self-preservation. That, I think, is the most we could do.

I think it would be undesirable to go further and extend the principle of sovereignty to the adjacent zone. At the same time,

I realise that codification will be difficult if we disregard the interests of certain States which are in a special position.

As regards the adjacent zone, we must start from the principle of the freedom of the seas and delimit the whole of the interests of States.

The Greek delegation is therefore definitely in favour of the freedom of the seas in this case, though it recognises the desirability of granting States the various rights which are absolutely necessary to them.

In granting those rights, however, we must take care. You know how easy it would be for a State to abuse them and to create a kind of *de facto* sovereignty over the adjacent zone. It all depends on the manner in which the rights are applied.

The Greek delegation is, therefore, I repeat, explicitly in favour of defining the maximum rights of the coastal States over the adjacent zone.

Vice-Admiral Surie (Netherlands):

Translation: The Netherlands delegation shares the view of the British delegate. It could even go further in order to meet the other delegations which lay claim to the adjacent zone, but it must stipulate that the provision regarding measures of security must be omitted. My delegation can only agree to the execution of measures confined to Customs and sanitary laws. It can therefore accept Basis No. 5 with the omission of the words " or interference with its security by foreign ships ".

M. Raestad (Norway):

Translation: According to the Norwegian delegation's view, the rights to be exercised by the coastal States in the adjacent zone must be clearly delimited. The difference between the British delegate's opinion and our own is not very great. International solidarity very soon develops from national solidarity, and that solidarity eventually imposes an international duty upon the State.

The difference of opinion to which I refer is therefore a purely theoretical one, and is not of any serious practical importance.

As regards the rights and powers which the coastal States may exercise, everyone accepts the Customs regulations. In this connection, we may ask whether a Convention should mention a limit in nautical miles, or whether it would not be better to employ a more general formula. International solidarity will not be stopped by a fixed limit.

We have seen that, in the Conventions adopted by the United States of America, no particular limit is specified.

If we raise the question whether, apart from Customs questions, there are any rights which the coastal State could be granted, we may mention sanitary rights. This problem no longer arises now as it did in the eighteenth century. Sanitary measures are organised now on more or less international lines, and the question no longer arises in the same way with our modern means of communication.

This problem may, however, be regarded from another standpoint. In the Basis regarding the right of innocent passage, we specially mentioned rules prohibiting vessels from discharging oil waste in territorial waters. As we all know, an international Convention on that subject is in contemplation. I do not know what progress is being made with that Convention. We might in our Convention consider allowing a State to issue certain protective regulations. In that connection, it would, however, be preferable to keep to an international Convention.

In any case, I must repeat that, in our opinion, we must clearly define the powers granted to the State in the adjacent zone.

Mr. Miller (United States of America):

On a part of this question, at least, it seems to me that there is a very considerable amount of agreement. In the first place, that the practical difficulties which exist are very great; that they differ in different parts of the world. I might go further and say that they differ not only among various countries, but, as regards particular countries, they differ in different localities.

It seems to be generally recognised by the discussions that there should be some solution of the difficulties. We all accept the principle to which various speakers have referred — that there should be freedom of navigation on the high seas. We not only accept it, but I think I might go so far as to say we would all wish to insist upon it. Abuses of navigation, however, occur.

I wish to draw attention to a draft Convention which was recommended, in 1926, to their Governments by the delegates of Belgium, the British Empire, Canada, Denmark, France, Germany, Italy, Japan, the Netherlands, Norway, Spain, Sweden and the United States, at the preliminary Conference on Oil Pollution of Navigable Waters. I wish to read an extract or two from that draft:

> " *(a)* In the case of coast bordering the open sea, such areas " (that is to say, areas in waters adjacent to their coasts within which discharge, from the vessels specified in Article III, of oil and oil mixtures shall be prohibited) " shall not extend more than fifty nautical miles from the coast except that if such extent is in particular instances found insufficient because of the peculiar configuration of the coast-line, or other special conditions, such areas may be extended to a width not exceeding 150 nautical miles.

"*(b)* In case the Government of any country desires to prescribe an area, any part of which may be within 150 nautical miles, of the coast of another country, that Government shall inform the Government of such other country before the area is prescribed.

"*(c)* Due notice of the establishment of any area or areas, or of any change thereof, shall be given to Governments of maritime States in the form of charts or otherwise . . ."

I do not intimate that that treaty has been adopted, but certainly the project represented important views regarding the necessity of preventing, in favour of navigation and in favour of other rights, the abuses which might result from navigation itself. I have read the above quotation partly to illustrate the great difficulty of this question, since, in a scheme which was recommended by the delegates of numerous important countries, reference is made to distances which seem very large when we have been talking of, let me say, three or six or some other number of miles near the coast.

The other reason for which I read the above extract was to show that, in the development of civilisation, no line that could be suggested, no limit of miles that could be stated, would suit existing conditions, to say nothing of the conditions of the future, which we do not know about and cannot envisage.

It seems to me that, under those circumstances, the difference is not fundamental. The difference of opinion is really a difference of opinion as to the method of solution. I think we are all agreed that there are difficulties, that they should be met, and the important question is how to meet them.

Sir Maurice Gwyer, if I understood him correctly, has suggested that these difficulties should be met entirely by special Conventions concluded between particular States or groups of States according to their local situation and interests. I doubt if that suggestion goes quite far enough, and I think that, in this connection, the proposal regarding oil pollution is an illustration; since, in that case, it is a question of the ships passing through particular waters. It makes no difference what flags they fly. It is not a question of an agreement between neighbouring States.

It seems to me that this is a good instance of the necessity for a general agreement regarding, at least, part of these difficulties that are presented. It may well be, however, that it is not possible to arrive here at any general agreement which would be acceptable; if we had to go into any technical matters, I certainly think we would all agree that that would be impossible. I do not, however, think it is impossible to reconcile the general aims of all the countries that are represented here by means of some formula which might be acceptable to those who would prefer that the whole matter should be left to be settled by special agreements in the future.

M. de Magalhães (Portugal):

Translation: I find that the Committee is very divided on this question too. The United States delegation's amendment calls for an unlimited adjacent zone; some States do not accept the principle of an adjacent zone at all. Others want an adjacent zone of a breadth not exceeding twelve miles from the coast. That is the happy medium, and Portugal is in favour of that solution. The Portuguese delegation thinks that, even if a breadth of six miles is allowed for the territorial sea, it is not enough for the coastal States, particularly as regards the supervision of fishing. On the other hand, it thinks that a limit should be fixed for the adjacent zone.

What are the grounds on which certain States refuse to admit the adjacent zone? They are very clearly set forth in the British Government's reply to the Preparatory Committee's questionnaire. I will read this reply, and will answer it in my turn:

"His Majesty's Government admit that the speed of modern vessels and aircraft and the immense range and power of modern implements of warfare may render a belt of three miles insufficient to prevent injurious consequences resulting in the national territory from acts which have taken place on the high seas, but this affords no sufficient argument for a change in the three-mile limit. To ensure that no injurious consequence should result within the national territory from an act which has taken place on the high seas, it would be necessary to establish a belt so wide as to constitute a serious encroachment on the high seas. A belt of such width would lead to perpetual disputes. The difficulty of determining with accuracy whether a vessel is within the coastal belt would be increased very largely if the width of that belt were increased, as, the greater the distance from the shore, the more difficult it is to fix by reference to the shore the exact position of the vessel. Furthermore, the burden imposed on neutral States in time of war would be intolerable."

The reasons given are unjustifiable. The buoyage and lighting of coasts have been so far perfected in recent years that coastal navigation has been greatly simplified. The careful hydrographic surveys carried out recently by most countries have largely helped to simplify the verification of these data along the coasts. Lastly, wireless direction-finding has provided the utmost possible facilities for coastal navigation. It is thus as easy for a vessel to determine its exact distance from and

position in respect of the coast, whether that distance is three, six or twelve miles.

We cannot see why the fact of increasing the breadth of the territorial waters from three to six or even twelve miles could involve neutral States in serious difficulties in time of war. The progress made in the construction of aircraft and the greater speed of vessels nowadays enables much more rapid and more effective supervision to be maintained than was possible thirty or forty years ago, and this over an area at least four times as large. The maximum range of modern artillery also enables a State to exercise its action at greater distances.

In view of these circumstances, we do not think that neutral countries would experience greater difficulties through an increase in the breadth of the territorail waters. On the contrary, I think that, in time of war, the neutral States require a much greater breadth of territorial sea than three miles to defend their integrity, and to carry out to the full the duties of neutrality imposed upon them by international law. For these reasons, I think the Convention on Territorial Waters should be applicable in time of war and in the event of neutrality.

We all recognise that the greater speed of ships and aircraft, and the increased range of modern artillery, render a breadth of three miles insufficient to safeguard the territory of a State from the harmful consequences of acts carried out beyond that limit.

But it is said that, for this purpose, we must fix an adjacent zone so wide that it would encroach to a considerable extent on the high seas.

Although the zone we fix must not be too wide, it must also not be too narrow and insufficient for neutral States. What we have to find is the happy medium.

I will point out another contradiction. It is said that a greater breadth would cause great inconvenience in the case of war and neutrality, and, on the other hand, when we say that the three-mile zone would be insufficient in the event of war and neutrality, we are told that the Convention does not apply in time of war. The contradiction is self-evident.

The British Government admits that no State can be expected to tolerate without disquiet the establishment of a state of affairs such that, on account of particular circumstances, the absence of jurisdiction over foreign vessels sailing on the high seas or in the immediate neighbourhood of territorial waters may seriously hinder the protection of a State within the limits of its own territory.

But what is the remedy proposed by the British Government?

It is this : when such a condition of affairs exists, every foreign State must conclude an agreement enabling the State concerned to exercise over the merchant ships of the foreign State concluding the agreement all rights of supervision which may be considered necessary. A State refusing to sign an agreement of that kind would be displaying towards the other States an absolute lack of that consideration upon which international solidarity depends.

I venture to reply that international solidarity can be better displayed in a multilateral Convention than in bilateral treaties or agreements. If it is to the interest of a State to conclude with another State an agreement for the exercise of some particular right beyond the territorial waters; the latter State, if it has not the same interest, will not fail to ask for compensation. The exercise of rights of such importance to security and to the essential needs of States must not be left to the vicissitudes of international life, or to the chance possibilities and the more or less onerous terms of bilateral agreements.

I venture to remind you once more of the discussion which took place at the Stockholm meeting of the Institut de droit international in 1928. Various speakers were opposed to the idea of an adjacent zone, and submitted the same idea of bilateral agreements. One of them, Baron Rolin Jaequemyns, even evoked the memory of Grotius. A distinguished professor, M. de Lapradelle, replied to him as follows :

> " We should be disregarding practice, and our work would therefore be sterile, if we did not accept the principle of the adjacent zone and did not assign to it a limit beyond which the regime of the open sea begins. It would, moreover, be very dangerous to leave the matter to private inter-State Conventions, because it may be questioned whether the freedom of the seas could validly be renounced even to a limited degree. Would Grotius, whose memory Baron Rolin Jaequemyns has evoked, have admitted such a renunciation? "

The distinguished international lawyer, M. Alvarez, then said :

> " It is, on the contrary, essential to affirm that such a zone can exist independently of the special treaties concluded on the subject."

I entirely agree with M. Alvarez.

Of the rights which may be granted to States in this adjacent zone, I will speak when this Basis is discussed more fully. I should like to say now, however, that the coastal State will have to be empowered to take the measures necessary for its security with respect to its neutrality and to Customs, sanitary and fishery measures.

I might adduce in support of this proposal regarding the policing of fisheries all the *vœux* and recommendations expressed by all the fishery congresses that have been held in recent years. You may obtain a brief account of them in my observations on

Dr. Schücking's report to the Committee of Experts. I will not weary you by repeating all these recommendations, which are in favour of making the territorial sea broader for purposes of fishing and extending the supervision of fishing beyond three miles to as far as twelve miles at least.

On this question of rights in the adjacent zone, the legal nature of which is open to discussion, I must say that, in my opinion, the rights which are to be granted to the coastal States necessarily include the right of jurisdiction ; otherwise, the provisions regarding sanitary, Customs, fishing and other measures would be inoperative.

It may be replied that that is obvious. In the draft of the Institut de droit international, however, a provision to that effect has been introduced, whereby the coastal State is competent in this supplementary zone to deal with infringements of laws and regulations. This might, of course, be omitted ; but I think it better to specify it, and I propose that for this adjacent zone we add a provision such as that in the draft of the Institut de droit international.

Mr. Lansdown (Union of South Africa) :

When some minutes ago, I recorded the opinion of the Government of the Union of South Africa in favour of the maintenance of the three-mile limit for territorial waters, I deliberately refrained from expressing my Government's view in regard to the desirability or otherwise of some measure of control being accorded to a State in the waters contiguous to the territorial waters, because I felt that I could not, in the very brief manner desired, adequately convey the views of my Government in that connection.

As I have indicated, my Government is in favour of the maintenance of a three-mile limit for territorial waters, and, save in certain special cases where certain rights of fishery occupation may be established, it sees no reason for the extension of sovereignty beyond that limit. At the same time, it realises that there may exist certain special circumstances which would render the absence of some measure of control beyond the three-mile limit prejudicial to the interests of the littoral State, and it thinks that a solution of this problem is to be sought, not by any extension of the territorial waters, but by the granting, by particular Conventions, of specified measures of control in a certain area contiguous to the territorial waters. I think that this can best be done by bilateral treaties between the parties concerned, and in that respect I desire to support the views expressed this morning by the delegate for Great Britain and Australia.

But suppose the Committee thinks otherwise ; suppose that, as a result, perhaps, of the persuasive words of my friend the delegate for the United States of America, the Committee thinks it is possible to arrive at some common formula which can find general acceptance, then it seems to me, in view of the various opinions and the greatly varying conditions which exist, that, even so, it would not be possible to make this a basis of the Convention, and that it would be better to consider whether — and I venture to make the suggestion — if such a common formula is to be found, it should be embodied, not in the Convention, but in a special Protocol which States who desire to adhere might sign, and which States who cannot agree to the proposal might abstain from signing.

In the task of discovering a common formula, I presume that the two great problems which would require solution would be the problem of what should be the extent of this contiguous belt, and, secondly, for what purposes control should be exercised.

My own opinion, which I venture to state, is that the area of control — if such an area of control is decided upon — should be strictly limited. In my view, three miles would be sufficient, but I know there are views to the contrary. Moreover, it may be a substantial argument against my view in this respect that, in the Convention between the United States of America and Great Britain, a width of water covered by one hour's sailing was decided upon. I presume, therefore, that a belt of three miles for the contiguous area was not in that case considered to be sufficient. My view at present is that a belt of three miles would be sufficient.

As regards the suggestion conveyed by the draft Convention which was referred to by the delegate for the United States of America, that there might be an area of 150 miles or even more in which there should be some measure of control, I do not think that anybody would be prepared to agree to that. I think such a proposal would lend opportunity for wholly unwarranted interference with the freedom of the seas, and, personally, I can conceive of no circumstances in which it would be necessary, for the interests of the littoral State, that control should be exercisable to anything like that extent.

The next problem to be decided would be the purposes for which such a belt, if a belt of control were decided upon, should exist. In that respect, I should at present find considerable difficulty in voting for Basis of Discussion No. 5 as it stands, because I have heard no argument which would render it necessary that the control should be exercisable for the purposes of sanitary regulations or for the purpose of security — the security of the littoral State. It seems to me that Customs regulation would be a legitimate purpose, and that possibly some area of control is necessary to conserve fisheries within the territorial waters, in which connection I am rather disposed to agree with the remarks made a few moments ago by the delegate from Portugal. It seems possible, also, that some control outside the

three-mile limit might be necessary for the purpose of the protection of navigation within the territorial waters.

Those three items seem to be legitimate purposes of control: Customs, the protection of fisheries within the territorial waters, and the protection of navigation within the territorial waters. I cannot at present find any argument in favour of the maintenance of control or the granting of control for purposes of sanitary regulations or for purposes of security.

If, then, the Committee feels that some generally acceptable formula is discoverable, possibly it might feel prepared to refer the matter to its Sub-Committee for the determination of those two problems and for the preparation of a draft formula. Then this Committee, if it should decide to adopt that formula, should, I think, consider the question whether it should not form rather the subject of an article in a protocol rather than an article in the Convention itself.

M. Erich (Finland):

Translation: The Finnish delegation has noted with great interest the British delegation's statement that Great Britain is quite prepared to conclude special treaties with States which consider that they require special protection against smuggling.

We agree, however, with the United States delegation that the matter should be subject to general regulation and that consequently there should be embodied in our Convention the principles laid down in Basis No. 5, with any minor changes that may be desired.

These principles are of particular importance to States which, through their geographical situation itself, are exposed to the danger of smuggling. This is particularly the case with Finland. Her long coast-line and her immense archipelagoes offer really extraordinary facilities for smuggling.

As you are all aware, a system of prohibition exists in Finland as in the United States. The more or less strict systems applied in the various countries of the world to combat the abuse of alcoholic liquor are always open to criticism.

However that may be, one important fact must be noted. In our days, the necessity of preventing the illicit traffic in contraband in general, and in alcoholic liquors in particular, is felt to some extent throughout the world, and this quite independently of the system applied in particular countries with regard to alcoholic liquors.

I might mention countries where strict measures are taken to prevent the smuggling of alcoholic liquor, even though the so-called prohibitionist system is not applied at all.

Thus, when a few years ago the Finnish Government asked the League of Nations to consider the possibility of examining desiderata of this kind, the Finnish request was supported by several Powers none of which applies the prohibitionist system.

Smuggling organised on a very wide basis, with vast capital and with the use of modern inventions, cannot be combated by the State against which it is directed, if that State is obliged to restrict the necessary measures; that is to say, if it cannot apply certain measures of protection outside its territorial waters.

One special point must be emphasised, namely, the misuse of flags, which, we are sorry to say, has become very common in Finland as in other countries. In my country, this abuse of the flag is producing serious and disastrous effects. That is a difficulty which must also be taken into consideration when we ask for the recognition of an adjacent zone in which the State would be authorised to take measures to prevent illicit traffic.

I venture to mention a declaration by the Finnish Minister for Foreign Affairs submitted a few weeks ago to the Council of the League of Nations and circulated to the members of this Conference. I submit this document for the sympathetic consideration of the Committee.

I am quite aware that I have only dealt with one special aspect of this matter. I do not claim to have exhausted the question, even in the matter of Customs supervision. The other aspects of the problem have been dealt with by other speakers, and for that reason I have confined myself to these few observations.

Sir Ewart Greaves (India):

I only want to add one or two remarks on behalf of the Government of India. When we were asked to give our views with regard to the limit of territorial waters, I stated that I would reserve what I had to say with regard to the question of an adjacent or contiguous zone. I did so because I was very anxious, before expressing an opinion, to hear the different views of those who contended on behalf of the establishment of a contiguous or adjacent zone.

I have listened with attention to the arguments that have been addressed to this Committee in favour of a such a zone and, as a result, I have come to the conclusion, speaking on behalf of the Government of India, that a case has not been made out for the establishment of a contiguous or adjacent zone.

I think the establishment of such a zone would present many difficulties. India has a long and extended coast-line, and I, on behalf of the Government of India, have had carefully to consider whether there are special circumstances affecting that Government which would make it necessary for it to contend for the establishment of a contiguous zone. I am not, however, myself satisfied that there are any sufficient reasons, so far as India is concerned, for the existence of such a zone, and I think the arguments against are greater than the arguments in favour.

I desire, therefore, to state, on behalf of the Government of India, that it agrees with the view expressed by the delegate for Great

Britain — that there should not be laid down, for the purposes of any Convention that may be signed here, any provision for the establishment of such a zone ; but that the Government of India, like the Government of Great Britain, will give careful consideration to the desires of any other State for the conclusion of bilateral treaties with regard to any adjacent zone so far as the interests of India and any State with whom such a Convention is concluded, are concerned.

The Chairman :

Translation : We have seen that certain delegations attach great importance to the adjacent zone. We have also seen that it influences the attitude of some delegations towards territorial waters.

I think the majority of the Committee shares my view that it would be desirable to adopt Mr. Miller's proposal and endeavour to find a a formula which would determine, in the first place, the breadth of the zone and, in the second, the rights which the coastal State would hold in that zone. We could then take up the question raised by Mr. Lansdown, namely, what diplomatic form must be given to the agreement.

In my opinion, this work should be carried out, not by the full Committee, but by the Sub-Committee. I propose to entrust it to the combined Legal and Technical Sub-Committees this afternoon. At that meeting, they might deal with the questions on their agenda and also that of the formula regarding adjacent zones. They could themselves decide in what order they would take up the various questions.

The most important and urgent work which we have before us, however, must be done by each of us individually ; that is to say, by the various delegations among themselves and not at official meetings. They must ascertain the consequences to be deduced from the situation which has emerged from the statements made to-day. We must think over this situation ; we must consult each other and try to find some ground of understanding. I think it would be very useful if proposals in the nature of a compromise, and of as definite a nature as possible, were made by groups of delegations.

I think you will all agree that this work must be done as quickly as possible, and, consequently, we cannot fix now the date of the next committee meeting, when we shall learn the result of these private negotiations.

M. Spiropoulos (Greece) :

Translation : The Greek delegation wishes to make a short statement. Greece is a small nation, but possesses a relatively large fleet. The Greek delegation, however, is aware that some of the larger nations have much greater interests in the questions with which we are dealing than those of the small country which I have the honour to represent.

What is primarily of importance to the Greek delegation is to be certain of the international law on territorial waters. In coming here, the Greek delegation obviously hoped that we should succeed in codifying the international law on a problem which is perhaps the supreme problem as far as territorial waters are concerned. It agrees with the Chairman in hoping that each of us will do his best to help the Committee in its task and achieve a result really worthy of the name, and not merely a solution which is meaningless.

M. Sjöborg (Sweden) :

Translation : I accept the programme of work the Chairman has drawn up ; but I venture to express the hope that there will be a plenary meeting for the discussion of the status of territorial waters. So far, we have only heard statements from the various delegations regarding their general position in this matter. Certain delegations would like to state the reasons for their opinions, and, accordingly, I hope the Chairman will arrange that the plenary meeting will not be too long delayed, and, in any case, will not be held later than Saturday morning.

The Chairman :

Translation : I think we all agree with M. Sjöborg that this discussion must take place. A plenary meeting of the Committee will be held as soon as possible, and, in any case, before the end of this week.

The meeting rose at 12.50 p.m.

FOURTEENTH MEETING

Saturday, April 5th, 1930, at 10 a.m.

Chairman : M. GÖPPERT.

28. BASES OF DISCUSSION Nos. 3 AND 4.

The Chairman :

Translation : This meeting of the Committee will decide the fate of the Codification Conference as far as territorial waters are concerned. We must know this morning whether we can find a solution for the fundamental problem, compared with which the questions we have dealt with so far are only of secondary importance. All the members of the Committee have declared their willingness to come to terms, and their sincere goodwill. We hope they will give practical proof of it to-day.

I would also beg the speakers to be as brief as their duty allows.

M. Spiropoulos (Greece) :

Translation : We have before us two fundamental theses. Some of the members of the Committee ask that the breadth of territorial waters shall be three nautical miles, while most of the others claim a breadth of six miles. Some delegates — those of Norway and Sweden, for example — have expressed an intermediate opinion and ask for four miles.

We are aware of the grounds on which the defenders of the three-mile principle base their claim. I think it would be useful if we also knew the reasons why the advocates of the six-mile rule press their view. We might then find it easier to reach an agreement. I would therefore ask them to tell us their reasons. As we have accepted the principle of the adjacent sea, some of those reasons may possibly no longer exist.

Admiral Keyserling (Latvia) :

Translation : The Latvian delegation repeats what it said in the joint Committee, that Latvia asks for a breadth of six miles for territorial waters because it wishes to be able to prevent, for at least that distance, attempts upon its national security. We maintain this demand because the Committee has not yet decided what rights States may have in the adjacent zone. If those rights meet our needs as regards security, we can accept a territorial zone of less than six miles.

M. Spiropoulos (Greece) :

Translation : I venture to press my request. I think that if all the delegates who favour a breadth of six miles would tell us frankly the reasons for their demand we might find a possibility of agreement. I fell sure even at this stage that the Committee will satisfy any reasonable and justifiable request.

M. de Magalhães (Portugal) :

Translation : As regards this insistent request to those who advocate a breadth greater than three miles to give their reasons, I would point out that we have already stated them quite adequately. This insistence might give the impression that there is a three-mile rule for the breadth of territorial waters and that those who favour a wider zone are asking for an exception to that rule. I categorically deny the existence of such a rule, and accordingly I cannot accept this invitation to us to give our reasons now, though I may do so in due course, or even at once if no one else speaks. I may add that I have not yet heard any objection to the fixing of the breadth of the territorial water belt at more than three miles.

M. Spiropoulos (Greece) :

Translation : I am sorry to see that I have been somewhat misunderstood. I did not mean that the six-mile principle has not been established. I do not claim to have settled the fundamental question. As, however, a majority has declared itself in favour of a breadth of three miles, and as that is the minimum claim, it seems to me reasonable that the delegations which demand a greater breadth should give their reasons. The opposite course would be more difficult.

The object of my request was merely to facilitate an agreement. We are, of course, not here defending ourselves in a court of justice. The delegations are not obliged to speak. Nevertheless, we have come here to reach an agreement, and, clearly, each of us could explain his point of view without settling the fundamental question.

I would remind you that the fact that we have accepted the principle of the adjacent zone may satisfy, at all events in part, those who are in favour of a breadth greater than three miles. I hope our Portuguese colleague will realise that I did not mean in anything I have said to attack a right of any kind.

M. Rolin (Belgium) :

Translation : In view of what our Greek colleague has just said, I wonder whether we could not arrange the various problems in

a definite order for the purpose of examining all the various requirements stated by the different delegations.

Having recognised the right of innocent passage in the territorial sea, we have provided for fairly extensive rights of sovereignty. These rights, however, correspond to separate needs. Thus, in a text drawn up yesterday evening we expressed the desire of a very large number of delegations that the enjoyment of certain of these rights should be extended beyond the territorial sea to zones the breadth of which has to be determined and which would be called adjacent zones. The text adopted by our small Sub-Committee provides for a breadth of twelve miles from the base line.

Thus, a number of delegations who are in favour of three miles are prepared to extend to twelve miles the State's power to take Customs measures or precautions for its security.

What, then, would be the difference between the regime of this adjacent zone, the existence of which the majority appear to be willing to recognise, and the regime of the territorial sea which some delegations still want to extend?

Apart from certain administrative possibilities which do not seem to be of any obvious vital importance beyond a distance of three miles, the first major distinction which presents itself seems to be the privilege of fishing, which is enjoyed by nationals in territorial waters but does not exist beyond those waters.

The question may be regarded in two ways. Our Portuguese colleague has already submitted amendments expressing the desire that, while not reserving the right of fishing for its own nationals beyond the territorial sea and in this adjacent zone, the coastal State may at all events extend the application of the regulations prohibiting the use of certain appliances, rendering fishing subject to certain regulations, so as to prevent the over-rapid destruction of the marine fauna, since the exhaustion of that stock would be felt in the territorial waters.

That is certainly a very important point. If we cannot at present accept it as a right which the coastal State would be recognised as holding in the adjacent sea, I think there are a number of us who will certainly ask that such a suggestion should be retained at all events in the form of a recommendation.

For a very long time, efforts have been made to draw up international regulations for the protection of marine fauna. It is an exceedingly difficult matter, as such regulations vary widely according to the species of fish and the particular region.

In brief, this suggestion to entrust the protection of marine fauna in the adjacent sea to the coastal State is a thoroughly practical one. We might keep it as a recommendation and perhaps transform it into a Convention later.

Apart from this question, it does not appear from the Portuguese delegation's amendment that the monopoly of fishing held by nationals must be extended to the adjacent sea. Perhaps I only take a superficial view of the matter, but I notice that those delegations which expressed themselves in favour of a breadth of territorial sea greater than three miles did not concern themselves with this consideration.

I have no intention to exercise pressure on my colleagues, but I think we might begin by asking whether any delegations here wish to retain a fishing monopoly in a zone of sea starting from the base-line and wider than the three miles indicated.

This is a first question which might usefully be asked for the purpose of defining rights in the adjacent sea.

M. de Magalhães (Portugal):

Translation: I should like to express my sincere thanks to M. Rolin for the support he has given, with all the weight of his authority, to the Portuguese delegation's proposal regarding the protection of fishing in the adjacent zone.

M. Rolin has invited the delegations who are in favour of extending the fishing monopoly in the adjacent zone beyond three miles to state their intention. I hasten to comply with this invitation, and I will submit to the Committee the following proposal, which I had drafted before this meeting began.

I have already stated my country's view, but if I may trespass upon your goodwill I will state why the Portuguese delegation is in favour of a breadth of six miles, with an adjacent zone.

It is my right, and also my duty, to show my colleagues of the other delegations that I can adduce in favour of my view solid arguments which will bear examination. These arguments are both of a general and of a special nature.

I think a breadth of less than six miles is insufficient both for the exercise of the coastal State's rights as regards its security and its economic interests, and for the fulfilment of the duties imposed upon it and the demands of international life.

The increase in the speed of transport, the new means of communication and the development and effectiveness of the means of action held by the various countries, have enhanced the necessity for exercising that action over a wider area.

I will not dwell on all these reasons; they are well known. They are the same, or practically the same, as those which led twenty-one eminent jurists in 1928, at the Institut de droit international, to vote for the six-mile rule, against twenty-three no less eminent jurists, while there were four abstentions. They are the same, or practically the same, as all those which were adduced here two days ago in favour of the same breadth.

I now pass to the special reasons which led the Portuguese delegation to claim this breadth. The coast-line of Portugal is very long in comparison with the area of her territory. Her continental plateau has a special

configuration which has a far-reaching effect upon fishing.

This plateau is excessively narrow. It is one of the narrowest in the world. It is only there that fishing can be carried on; further out, the sea falls to great depths, abysmal depths inhabited only by rare species which, generally speaking, are not edible.

(Here the speaker produced a map by the British Ministry of Agriculture and Fisheries showing the depths of the sea.)

At a certain and rather variable distance from the coast, the sea-bottom shows a slope which is almost everywhere abrupt, and which divides the bottom into two different regions — one which lies between the slope and the coast-line, called the continental plateau, and the other, much larger, which extends beyond the slope and forms the deep-sea bottom.

In the north, off the coasts of Denmark, the Netherlands, Belgium, Great Britain and, in part, France, the continental plateau is very large, whereas off Spain and Portugal it is very small. The difference this makes is immense, as may be realised from the map I have just shown you, since fishing can only be carried on on the continental plateau.

Portuguese fishermen have too small an area in which to engage in their occupation. They cannot go far out upon the high sea because the depths are so great that they cannot fish there; whereas, in the northern countries I have just mentioned, it is possible to fish over a much wider area. I must repeat that the various species of fish are concentrated on the narrow plateaux; whereas, on the wider plateaux, they are spread out. Fishing is thus more concentrated on the narrow plateaux, because it is easier and more profitable there. Thus, on the one hand, Portugal has a very narrow continental plateau; on the other, this very fact induces foreign fishermen to go there, so that the Portuguese are in a very critical position unless they can have a monopoly of fishing within a belt of at least six miles.

To enable you to realise the immense importance of fishing for Portugal, I could give you statistics showing what fishing represents, not only for the national economy, but also, and pre-eminently, for the food-supply of her population, particularly her coastal population.

More than 50,000 men are employed in fishing in Portugal, which represents a very high percentage of the total population of the country. Portugal thus cannot agree to a breadth of three miles; it is a vital necessity for my country to have a territorial sea at least six miles wide.

I have one thing more to say. On theoretical grounds, and for reasons connected with maritime navigation, I am in favour of a single and wider zone for all countries and for all purposes; but, as I have already said, I will accept the two zones, provided that each of them is six miles wide. Further, in order to show my conciliatory attitude, although my country can only accept a breadth of six miles, I will not object to certain other countries having a narrower breadth, of two, three or four miles.

The discussion has shown that we cannot impose an international rule fixing the breadth of the territorial sea. If those who advocate a belt less than six miles wide cannot decide to accept the six miles for themselves, we must come to a compromise, otherwise, the Convention would from all points of view be very limited, and, indeed, negligible, in scope.

M. Giannini (Italy):

Translation: Surely this must still be the first day of the Conference! Must we at this stage carry on hair-splitting discussions? Can we not now draw the conclusions of our twenty days of debating? I cannot understand why we should now begin sterile debates instead of taking decisions.

We are asked why we want one solution or another. If the object of this question is to see the answers entered in the Minutes and to make a great deal of work for the Secretariat, I think the question is entirely unjustifiable. This discussion can do nothing but waste our time.

No one has yet had the courage to say frankly what I am going to say. I am not going to make history, but I will say that the three mile principle was laid down for historical reasons which now have no more value. At the time when that principle was established, it was held that the State had the right of self-defence in its territorial waters for a breadth equal to the range of cannon. The range of cannon was then about three miles, and that limit was sufficient to enable the State to defend itself, and also for military, police, Customs and other purposes.

Although the three-mile principle was justifiable then, I ask whether to-day, under present conditions, we are all prepared to accept gunshot range as the criterion. The three-mile principle is no longer justifiable, because if we take Big Bertha as our criterion we might make the breadth sixty-five miles, and I hardly think anyone would be content with that solution.

The three-mile principle, therefore, has no longer any justification. It is out of touch with the requirements of modern life, as far as its theoretical justification is concerned. The practice followed, moreover, is far from universal. There is a breadth of four miles, which no one disputes. There are breadths of six miles, twelve miles, eighteen miles. No one has asked for more than eighteen miles, though some delegations would be prepared to exceed even that limit.

You ask us why we want six miles. We make this demand because it answers my country's requirements. Indeed, when I asked

for six miles it was by way of a compromise, in order to reach a definite result.

The outcome of all our discussions is that we must realise that there is no principle of international law in this matter. There is simply a belt of sea over which the State has the same rights as over its own territory. What is the breadth of that belt? It varies according to time and place.

You have said that there are historic waters, and that the territorial sea begins beyond the historic waters. There is thus relativity in countries as in time.

I say that a breadth of six miles answers certain present-day requirements, but I cannot stop the march of history. I do not know what developments will take place. I want to lay down the principle that the State has a right over its territorial waters; but I cannot say what the breadth of those waters will be to-morrow. In these circumstances, if we want to reach an agreement, it is useless for us to engage in historical discussions to see whether the absolute truth lies in three miles or six miles or twelve miles. What we must try to do is to find a compromise.

There is only one international principle in the matter, and that is, as I have said, the State's right to possess territorial waters. The question of the breadth does not depend on a principle of international law; it is a matter to be settled by agreement.

If we want to reach a compromise, we must try to meet each other. We must confine out attention to what is practical, and see what we can do now. Any exposition of principles or any declaration of national requirements is useless. If they are wanted for the Minutes, the Chairman can ask the delegations to prepare memoranda. For my part, I have no declaration to make, but if any of our colleagues wish it, a written statement could be attached an as annex to the Minutes, and the demand of history will be satisfied. The only result will be that we shall have Minutes amounting to 200 pages instead of fifty or sixty. I beg of you, however, not to let us waste our time in these useless and sterile statements. Let us try to reach definite conclusions. Do we agree upon the following two points: first, that there is a single principle of international law, namely, that the State has the right to possess territorial waters; and, secondly, that we want to reach a compromise?

M. Novakovitch (Yugoslavia):

Translation: I think there is no point in our prolonging this discussion. We want to reach an agreement in a few days on a question which has been debated and disputed for centuries. The discussion of the breadth of the territorial sea does not date from yesterday. In past centuries widely divergent opinions were expressed and very different criteria established. Eventually, agreement was reached upon a criterion which seemed to form the best legal basis, namely, cannon-shot range. In the past, three miles corresponded to cannon range. But, as M. Giannini has said, and as we all know, gunshot range to-day is very different from what it used to be. In my opinion, the three-mile rule is now like an envelope emptied of its contents. The figure remains, but the basis of justification no longer exists.

I am one of the first to seek for grounds on which we can come to terms, and I think we all wish to find a solution on which we can reach an agreement. I do not think, however, that we can do so by laying down any figure as the rule. The statements made the other day show that opinions are widely divergent. The only possibility of agreement seems to me to fix a maximum, whether in the Convention or in an additional Protocol, and that is the suggestion I make to the Committee.

M. Spiropoulos (Greece):

Translation: I was very glad to hear what M. Giannini said regarding compromise and conciliation. Since he represents a great Power, and since he is prepared to do his utmost to reach a compromise, we may hope to arrive at a settlement of this much disputed point.

I was somewhat sorry to hear the representative of a country which is a friend of Greece — Yugoslavia — express the view that we could not reach an agreement on this problem in the few days that remain to us. I agree with him that a solution will not be easy to find; but will it be any easier later?

The solution of a problem is a matter of a single moment; it is no easier to find if we lay the problem aside. Every time the question is taken up again the same difficulties recur. What will happen to our Convention if we leave this question unsolved?

The problem we are examining to-day is the most important one on our agenda. Undoubtedly, the essential reason which led the various countries to place the question of territorial waters on the Conference's agenda was this very uncertainty as to the breadth of those waters. It was this particular point which led the League of Nations to ask the Conference to examine the question of territorial waters. If we fail to answer it we shall greatly lessen the value of the results we achieve on other points.

M. Giannini has told us that his country asks for a breadth of six miles because that figure answers its historical requirements. But, he added, we do not know what the historical requirements of his country will be to-morrow. I recognise that a country may have historical requirements; but, if we state the problem in that way, we shall never reach a solution. Historical requirements change, and under those conditions we shall never succeed in codifying international law. For that matter,

the same problem arises in municipal law. Has municipal law never been codified, on the plea that requirements are changing from day to day? We must consider the requirements at a given moment, and codify on that basis. That does not mean that the codified rules can never be changed afterwards. Possibly we may to-day establish a rule which States will abandon to-morrow by a new Convention. Possibly, too, the rule we draw up may be abrogated some day by a contrary custom.

I am also glad that M. de Magalhães has expressed views which seem to me very promising for the settlement of the problem. He says that his country has two kinds of reasons for a breadth of six miles. There are, in the first place, general reasons. In this connection, he cited the inadequacy of a three-mile zone to ensure State security and to enable the State to fulfil the duties imposed upon it by international law, and, lastly, he invoked the standpoint of international life.

As regards State security, I think the rights we have conceded to States by accepting an adjacent zone will meet this objection. As regards the duties arising out of international law, I do not think they can be such as to require an extension of State sovereignty over territorial waters to a zone of as much as six miles.

But, as M. de Magalhães added, his country also has special grounds, such as its geographical configuration. He pointed out that his country required a right of fishing up to a distance of six miles. This argument seems to me most important. There are *de facto* situations which have really acquired the value of *de jure* situations. We must recognise that, in the other problems we have examined here, we have admitted the existence of certain acquired rights based on a special rule. In the present case, I think we cannot but recognise the existence of certain rights. The Greek delegation will be prepared to take them into account.

I do not mean that everyone should be allowed to claim other rights. We must keep simply to those which have been affirmed and recognised by the other nations.

In so doing, we could readily see whether an agreement is practicable. For my part, I say quite explicitly that it is, and must be, possible.

M. Sjöborg (Sweden):

Translation: Just now M. Rolin asked whether the countries which claimed a breadth of more than three miles would not be satisfied by being granted what is called the adjacent zone. Possibly, from the Customs point of view, certain countries may be satisfied with that solution. I should like, however, to say that we must not sacrifice the present status of international law — that is to say, the possession of a right — for a hope which perhaps will prove illusory.

I do not know whether the Convention will recognise this adjacent zone. If it does, what will be the position of countries which have signed the Convention in regard to those which have not acceded to it? It will be the flags of these last countries which will be flown by smuggling vessels sailing in the adjacent zone and in the territorial waters of the signatory countries.

I know M. Rolin's clear-mindedness too well to believe for a moment that he could imagine that Sweden's vital interests would be safeguarded by the grant of such an adjacent zone.

I will explain why Sweden finds it necessary to keep the four-mile limit.

Sweden's territorial waters have had a breadth of four miles for a very long time. That breadth was fixed in our country as early as 1779, as the limit of neutrality. A large number of regulations, instructions and laws were issued by Sweden, all maintaining the same limit, in the course of the eighteenth, nineteenth and twentieth centuries. It has even been kept as the limit for fishing and for Customs purposes. The four-mile rule is therefore based on an uninterrupted and more than century-old tradition.

Those who favour the three-mile rule maintain that this limit should be imposed on all without exception. If a strictly identical international regime is to be justly imposed upon all countries without exception, the circumstances of those countries, in respect of the question to be settled, must obviously be exactly, or practically, the same.

This may be true of various fields in which international regulations are laid down, but it is rarely the case when — as in the present instance — the questions to be settled are territorial.

The territorial waters of Sweden are somewhat peculiar in character. All along our vast coast-line there is an almost uninterrupted chain of islands, islets and reefs, numbering hundreds of thousands. Beyond these islands, islets and reefs the water is almost everywhere shallow and full of submerged shelves and rocks.

In such circumstances, the regime applicable to Swedish territorial waters must naturally differ from that applicable to the waters of countries which have not the same peculiar geographical configuration.

These are reasons based on the special configuration of the coast, and they compel Sweden to maintain the four-mile rule.

On the maintenance of this rule depend interests which are of absolutely vital importance. These interests concern primarily the security, nay, the very existence, of Swedish shipping, including the long-distance coasting trade.

The four-mile rule would be particularly necessary in the case of a war where Sweden observed neutrality.

For geographical reasons, our maritime transport is carried on largely along our own coasts. Thus, our chief exports, which are essential for the economic life of the country, take a route which follows our own coast first in the Gulf of Bothnia and the Baltic Sea, and afterwards in the Cattegat.

In view of the nature of the waters, which I have just indicated — the large number of submerged shelves and rocks-ships cannot sail at a distance of only three miles from the coast. This impossibility exists in certain waters even in the most favourable circumstances, and during the winter it exists throughout almost the whole length of the Swedish Baltic coast, because the buoys have to be withdrawn in that season, otherwise they would be carried away by the ice.

It cannot be claimed that the Swedish point of view on the subject of territorial waters is incompatible with the legitimate interests of other Powers.

Whether the territorial-water limit is fixed at three or at four miles, freedom of peaceful navigation is guaranteed by the principle of " innocent passage ", which is fully recognised by the Swedish Government. In time of war the Swedish four-mile rule would thus constitute the necessary protection for peaceful shipping, both foreign as well as Swedish, off the coast of Sweden.

What objection can be raised to what I have just said regarding the necessity of recognising a four-mile zone for our own protection in the event of war?

Can it be maintained that war questions do not come within the scope of our Convention? No. I recognise, indeed, that it is not proposed to define here the rights and obligations of neutrals in case of war; but can it really be believed that the breadth laid down in the Convention for territorial waters would not be that applied in time of war? Can it really be believed that, if the Convention allows the coastal State sovereignty over a zone of only three miles, that country would have the right, in a war in which it remained neutral, to extend its sovereignty to a wider zone? Obviously not.

The Hague Convention of 1907 on Naval War prescribes the inviolability of the territorial waters of neutrals. It forbids belligerents to commit acts of hostility in those waters. It also lays upon neutral countries an obligation to prevent any act of hostility in them. It is silent, however, on the question of the breadth of the waters, nor is that breadth specified in any other Convention.

If in the proposed Convention we fix the breadth of territorial waters, it is obviously that breadth — since there will be no other — which will, and will alone, be valid in time of war, even if the Convention itself were silent on the point.

What further objection can be raised to our claim to fix the limit at four miles? Can it be maintained that the three-mile rule is universally recognised and that therefore it forms part of international law? No. There are no universally recognised rules regarding the breadth of territorial waters. In that matter we may refer to the invaluable documentation collected by the two League of Nations Committees.

Further, we find that the four-mile limit is older than the three-mile limit. The four-mile rule was adopted by Sweden as early as 1779, and by Norway even before that date, whereas the first application of the three-mile rule only goes back to 1793. At that time, the United States employed the four-mile limit, and that limit was afterwards provisionally adopted by the United States as its neutrality limit.

Since that time, and particularly in the last thirty years, the three-mile, limit has been adopted by a number of States. Sweden, however, cannot feel herself under the obligation to sacrifice the territorial limit which she has observed for 150 years, and which is essential for her security, simply because, after her adoption of her limit, certain States fixed a narrower breadth for their territorial waters.

If Sweden's cause were pleaded in the hall above us, where the Permanent Court of International Justice sits, I do not doubt for a single moment that the Court's verdict would be in favour of my country, because that verdict could not but be based on respect for acquired rights.

I will now venture to submit to you a proposal regarding our future work. I simply lay two questions before the Commission:

1. Is there or is there not in international law a rule regarding the breadth of territorial waters fixing their breadth at three nautical miles for all States without exception?

2. If the Committee does not unanimously reply in the affirmative to the preceding question, is it or is it not desirable to fix by Convention the breadth of territorial waters for all States without exception at three nautical miles?

My reason for putting these questions is this: If we begin to vote on the breadth of the territorial sea, some delegations will say that they cannot come to a decision because the question is intimately bound up with that of the adjacent zone.

On the other hand, if we take the question of the adjacent zone and ask for a vote, certain delegations will raise the objection that they cannot come to a decision because they must first vote on the question of territorial waters.

In these circumstances, I think it would be desirable to begin by raising the question whether or not there is at present a compulsory three-mile rule in international law. According to the documents submitted to us by the

League of Nations, I claim that that rule does not exist. Some States claim the contrary.

I think it is very necessary to raise this question. If, however, the Committee does not agree, and thinks that we must not vote on the question, I shall draw the proper conclusions from that refusal.

M. Egoriew (Union of Soviet Socialist Republics) :

Translation : At the thirteenth meeting of the Committee, I set forth certain considerations regarding the rights of the State in the coastal sea.

After the statements made by M. de Magalhães and M. Giannini, I have little to add regarding the question of fisheries.

In order to restrict the coastal State's rights over the riches of the sea or of the sea-bed, there seems to be no good reason for getting rid of these rights altogether. In this sphere, too, we find a series of rules which are far from uniform. Moreover, as has already been pointed out, it is in this sphere that local peculiarities are most noticeable. There is no need to repeat the reasons already adduced ; we need only note that fishing areas depend largely upon the configuration of the sea-bed. Fishing constitutes the living of the local population, and is closely bound up with the economic life of the country. The creation of big undertakings and the application of new methods to the exploitation of the riches of the sea have also raised new problems in this matter which are not less important than those of the security of the coastal State and the safeguarding of its laws.

The progress of the Committee's work has clearly shown that the very complex task of reconciling the exercise of the coastal State's rights with the demands of free navigation, to which I referred the other day, cannot in these circumstances be satisfactorily carried out ; it can only lead to a simplified and limited agreement between certain States which are prepared to apply to themselves the provisions they have drawn up.

If we apply rules that are rigid, too simple or too theoretical, such an agreement would not help to solve the general difficulties which arise in practice, and which, in other circumstances, are and could be settled with more elasticity and greater ease.

It would, therefore, be better not to take a definite decision on this question.

Dr. Schücking (Germany) :

Translation : We must not think only of the various Governments ; we must also think of the peoples themselves. After the tragedy of the world war, each and all of us hope for an era of new human relationships. This epoch must lead to the rule of law among the peoples, and that rule is possible only if the laws are definite and detailed. That is why all the peoples hope for the success of our Conference, and that is why we must come to an agreement if we do not want the Conference to fail.

It should surely be possible to establish a general breadth of three miles with an adjacent zone and with recognition of all acquired rights, particularly in regard to fisheries.

Vice-Admiral Surie (Netherlands) :

Translation : I think the Committee is unanimous on one point, namely, that we must come to a decision.

We have before us three provisions : Basis No. 3, which fixes the breadth of territorial waters at three miles ; Basis No. 4, which grants a greater breadth in order to take into account the needs of certain States ; and, lastly, Basis No. 5, which extends the territorial waters by establishing an adjacent zone of twelve miles.

I think that these three points are closely connected. We cannot take a decision on one without knowing what the decision will be on the others. We must therefore consider them *en bloc*.

The Netherlands delegation's view is this : If the Committee decides to abolish the rights of the coastal State in regard to measures of security in the adjacent waters — and we regard these rights as likely to hinder navigation on the highse as — the Netherlands delegation is prepared, while maintaining the three-mile limit for the territorial waters of the Netherlands, to agree to a higher limit for other countries and to consider the establishment of a belt of adjacent waters for the sole purpose of exercising Customs rights, maritime police and for fishing.

M. Spiropoulos (Greece) :

Translation : The Swedish delegation proposes that we put to the vote the question whether there should or should not be a fixed limit for territorial waters. It is difficult to vote on that question, because we have not discussed it, and because, if we do, the Committee would be assuming judicial rights which it does not possess. The Greek delegation is of opinion that, if we take a decision on that point, we should be settling a problem which judges alone can decide.

We have come here to codify law and to find out what the law is to be. As you have seen, most of the speakers — M. Giannini is an exception — who favoured the six-mile limit did so for reasons connected with fishing and in order to preserve certain acquired rights in that field. The Greek delegation agrees to the recognition of certain fishing rights.

If the Committee agreed to meet the demands of those who claim certain fishing rights, the Greek delegation would support that view. It would also be willing to recognise a breadth of four miles as an exception in the case of Norway and Sweden, but it would do so only for the sake of a compromise.

As a number of other speakers have pronounced themselves in favour of the six-mile limit, we should have the following :

Three miles, the general rule for territorial waters ;

Four miles, the exceptional case for Sweden and Norway ;

Six miles, for States having acquired rights in respect of fishing — that is the maximum demanded ;

Twelve miles, for the adjacent zone, this being the breadth which the Greek delegation would be prepared to accept.

As regards Italy's wishes, I may say that the Greek delegation is prepared to do its utmost to meet the Italian claims as far as possible. I should be particularly glad if M. Giannini would tell us exactly what his minimum claims are.

M. Giannini (Italy) :

Translation : I thank you, but I have nothing to say.

M. Spiropoulos (Greece) :

Translation : If the Italian delegate tells me in advance that he has nothing to say, I myself cannot tell what concession I might make.

However that may be, I think the majority of the Committee is in favour of a radical and definite settlement of the question.

Sir Maurice Gwyer (Great Britain) :

None of those States which are in favour of the three-mile rule has any reason to complain of the way in which those who take another view have dealt with this question. The discussion has proceeded in so calm and even an atmosphere that I draw from it a hopeful augury for the future, even if, at this moment, complete agreement may not be found possible.

I do not wish, therefore, to say anything which might tend — if I may use the expression — to solidify opposition on one side or the other, but rather to indicate in as general language as I can the views of my own Government, to explain how and in what respects they differ from the views which have already been expressed, and possibly to play my small part in laying a foundation for some kind of accord — if not now, then later.

The principle which, I think, should govern our consideration of this question is the fundamental principle of freedom of navigation, a principle to which I think all delegates who have spoken throughout the meetings of this Committee have paid a tribute of respect. If, therefore, freedom of navigation is to be our guiding principle in coming to some arrangement on this matter, it follows, I think, that, *prima facie*, we ought to take as small a zone for our territorial sea as possible, remembering, also, that a week ago this Committee decided that a jurisdiction of the coastal State over its territorial waters was the jurisdiction of sovereignty.

When we are asserting sovereignty over a portion of the high seas, which are the common highway of all the world, it behoves us to be as limited in our demands of sovereignty as it is possible to be. Therefore, on that general ground, and without, at the moment, laying any stress upon the rule of international law, I would submit to the Committee that a three-mile belt — the smallest belt, I think, which has up to the present time ever been discussed among civilised nations — should receive first consideration.

It has been said, I think, by M. Giannini and by the delegate for Sweden, that there is no such thing as a rule of international law prescribing the three-mile rule. That, of course, depends on what is meant by a rule of international law. I am not prepared to argue that the rule of three miles has existed from the beginning of all things, even though its existence was not revealed to the human race until a comparatively recent date. It has been said, in my own country that the rules of the common law, as distinguished from those of Acts of Parliament, find their ultimate origin in the bosom of God. I am not prepared to make so high a claim as that for the three-mile rule, but I do say that it is a rule now of very respectable antiquity. I think it can be traced back, in spite of what the delegate for Sweden said, at least three hundred years. I think I am right in saying — I mention this merely as an historical matter without making any point of it — that, in fact, its first appearance in public was in a Swedish Customs law somewhere about the middle of the seventeenth century. I am not basing any argument on it, and I make no point of it ; I merely mention it as a matter of history.

How a limit of three miles came to be suggested in the first instance I do not know. I very much doubt whether it was selected as the extreme range of cannon-shot at that time. I should doubt myself whether, in the middle of the seventeenth century, the effective range of cannon-shot was three miles or anything like it ; and I am much more disposed to think that three miles was selected more or less by chance, and that the jurists afterwards invented reasons for it and, among other reasons, the range of cannon-shot theory.

I think that theory is first found in the pages of Bynkershoek in the early years of the eighteenth centrury ; but, whatever its origin may be, the rule itself has now been before the world for nearly three hundred years, and it has received growing support from the great majority of maritime nations. I am far from saying that every maritime nation subscribes to it, but the great majority of them do, and, in my view, that is a matter to which very great importance should be attached.

I have taken the trouble during the last week to look out the figures of the world's tonnage for 1929, and I find that nations which own over 70 per cent of the world's tonnage have declared themselves in favour

of the three-mile limit unconditionally, and that nearly 80 per cent of the world's tonnage is possessed by nations which have declared themselves in favour of the three-mile limit, either conditionally or unconditionally.

I do not wish to put my argument too high. I quite agree that that is not conclusive ; but it is a matter, it seems to me, of very profound significance, because the maritime nations of the world, and not only the maritime nations possessing the larger mercantile fleets, but maritime nations possessing the smaller fleets also, have declared themselves in favour of a rule which connotes a greater freedom of navigation than any other. Therefore, this general concurrence of the maritime nations of the world is a matter which I think cannot reasonably be left out of account.

It seems to me, from the course of the discussion, that the criticisms and the objections to the three-mile rule, whether or not accompanied by a demand that States should have the right to fix their own territorial belt, centre mainly around two points : one, the question of fisheries, and, the other, the needs of national defence.

With regard to fisheries, I would only say this. This is a subject of primary importance to particular nations, but what is important for one nation in its relations to another nearby may be a matter of no importance at all to another nation on the other side of the globe. Fisheries on the coast of Norway, which have been a matter of interest and sometimes of difference of opinion between Dr. Raestad's country and my own, are, I should imagine, of no interest whatsoever to the delegate from Japan.

I therefore suggest that the true line of approach for the solution of the problem of fisheries is rather that the individual nations concerned in the problems of particular fisheries should put their heads together and attempt to solve their domestic differences by means of seperate Conventions, rather than that all the nations of the earth should attempt to lay down one rule which would govern fisheries universally throughout the globe. The procedure I suggest has been adopted, not without success, in the North Sea Fisheries Convention. Conventions have been concluded between my own country and France on the same subject. Fishery Conventions have been concluded between Spain and Portugal and, I have no doubt, between numerous other nations too.

Then the other point, that of national security. Is it really true that a much wider belt of territorial water over which a State is to exercise sovereignty tends, in fact, to the greater security of the State ? I am not so clear that that is a matter beyond argument.

We heard one delegate speak yesterday of the great burden which some amendment before the Committee, involving an increase in the area of territorial waters, would have laid upon his country. He renounced the idea of increasing the territorial waters of his country in that way because, as he said, the burden of national defence would be vastly increased at the same time.

I submit for the earnest consideration of the Committee that, the wider the territorial belt, and the greater the area of the territorial waters for which a country has to be responsible, the greater is the difficulty of safeguarding its neutrality in time of war and the greater is the difficulty of protecting the waters over which it is sovereign from possible incursions by its enemies.

I prefer, however, not to speak of this subject in terms of war at all, but rather in terms of peace. It may be that, even in times of peace, dangers will threaten particular States. For that purpose, they must, no doubt, possess all the necessary powers to repel attack and defend themselves. But the existence of those rights no one denies at the present time, and, if a State is threatened with attack from outside its territorial waters, no country in the world would criticise that State for going beyond its territorial waters in order to repel that attack. An additional area of territorial waters affords no additional safeguard and it may be that the solution of the national defence difficulty is rather to be found in the recognition of the right of the State — which I should have thought nobody here would deny — to take all such steps as may be necessary to repel any imminent danger which threatens it, whether within its territorial waters or outside them.

That concludes what I have to say, except this : the delimitation of a zone of territorial waters is a matter of great practical interest to all navigators ; and, the further out the territorial belt is pushed from the coast, the more difficult will navigators find it to ascertain exactly what their position may be and to know whether, let us say, in time of war or stress, they are in neutral waters or not ; or, if it is a case of fishing, whether they are fishing in a prohibited zone or not. That is a practical question, not a question of international law or usage at all ; but, in connection with the subject which we are discussing, it is one which must not be left out of account.

I have detained the Committee longer than I had intended to do, and I should like to add only one word. I am very anxious indeed that nothing that I have said should make it appear that I am taking up an attitude which would render agreement in the future less likely that when I began to speak. I have endeavoured to put my views as persuasively as I could, and, though I cannot expect for a moment that those who disagree with me will be convinced by what I have said any more than I have been convinced (even though I have been impressed) by what my colleagues have said this morning, yet I hope the atmosphere in which the debate has continued, and I trust will continue, will enable us to lay the foundation for an agreement in the future

— though not perhaps in this coming week — on a very difficult and complicated problem.

M. Björnsson (Iceland) :

I should like to explain in a few words the reasons why I voted for the four-mile rule. In my country, four miles has been the limit since the middle of the seventeenth century for all purposes, including fisheries. In 1901, a Convention was concluded with Great Britain fixing a limit of three miles for fisheries, and, therefore, we maintain that limit for fisheries and shall maintain it as long as the Convention is in force, though for all other purposes we maintain the limit of four miles, which has been the accepted limit for the last three hundred years.

In regard to fisheries, there are certain people in my country who are of opinion that the three-mile limit is too narrow ; some desire a six-mile limit, but I think four miles (which is the historical basis) would be a fair limit, provided it were possible to have some rules for protecting the fisheries in certain areas outside the territorial waters.

I regret that I am unable to agree entirely with Sir Maurice Gwyer that fisheries are primarily of special interest to one or several nations in each particular case. Around Iceland, there is rather an international fishery ; I think I may say that more than ten different nations fish in the waters round the coast of Iceland, and the number of nations which go to the rich banks there for fishing is constantly increasing. Furthermore, there are many nations which, though they do not fish in the waters round the coast of Iceland, are interested in obtaining the produce of such fishing. Therefore, in my opinion, it is an international question how we deal with the waters round the coast of my country and certain other countries so far as concerns fisheries.

I will not deal further with the question at the moment ; it may be possible for me to return to it when the proposals which the delegation for Iceland has submitted to the Committee are discussed. I should, however, like to express an innocent hope. We have seen that about half of the members of the Committee are in favour of the three-mile limit with or without reservation, and that about half are against it. We cannot reach a conclusion as to the general rule which would be desirable ; but I would express the hope that, in the future, it may be possible for the two parties to approach each other a little, and perhaps they may end by adopting our historic four-mile rule.

M. Giannini (Italy) :

Translation : I must make three protests which I think are very necessary. I protest, in the first place, against the matter of gifts. I want no one to make gifts to me. One day we receive a gift of the adjacent zone ; on another occasion we are presented with another gift when the waters of archipelagoes are declared to be inland seas ; another day we are asked to renounce certain rights, and that renunciation is presented to us as if it were yet another gift. I do not want to be overwhelmed with gifts. I want to have nothing to do with equivocal gifts of that kind.

My second protest relates to what Dr. Schücking said. I think Dr. Schücking said rather more than he meant. We represent the peoples here, since there is no difference between Government and people.

It is my third protest, however, that I want to emphasise. It relates to what was said by our British colleague. I cannot agree with him when he says that the leading maritime Powers of the world favour the three-mile rule. I am quite aware of the size of the British Empire and of the United States, but we must not forget the principle of the equality of States. Here, we believe in the equality of States, so that the British case is worth no more than my own.

Having said that, I will draw my colleague's attention to this point ; from the point of view of doctrine, we have always recognised that the State has a right of sovereignty over the territorial zone. I am told : Yes, but there is a missing factor, because the breadth of that zone is not fixed. Now, what is the legal and historical basis for a limit of three miles, or six miles, or twelve miles, or eighteen miles ? If we refer to the works of jurists or historians, we find there is no rule at all. The distinguished jurist, Bynskershoek, was mentioned just now, and I would remind you of his saying that the extent of the territorial waters ends " *ubi finitur armorum vis* ".

Whence have the divergencies arisen ? From the fact that national requirements vary in each country ; yet why call what meets the national needs a claim in the case of one's own country and not use the same word for the needs of another country ? Must I sacrifice the interest of my own country in order to be able to say that the three-mile rule is an unchanging law ? Let us avoid the word " claim " ; there is no question of a claim here, just as there is really no question of a gift. All we have to do is to recognise what is right, and that is what I, for my part, have always asked.

Our British colleague has spoken of freedom of navigation, and on that point we are agreed. I have always pointed out that we must not lose sight of freedom of navigation. It was for that very reason that we contemplated establishing an adjacent zone. There is no international principle requiring the establishment of an adjacent zone. We are creating it by the Convention itself. There is only one universally recognised right—the State's right over the territorial zone. The three-mile rule does not exist as a rule of international law.

In these circumstances, what can we do ? We can only come to conventional agreements, just as we shall only be able to establish the

adjacent zone by means of a Convention. Conventional agreements, too, will enable us to reconcile the demands of navigation with the interests of States—will reconcile, that is to say, two principles which must never be opposed ; otherwise, we should be forced to recognise that there is no way of reaching agreement.

We believe that agreement is possible ; but we must bring the question onto practical ground by saying that it is in the fundamental interest of all States to ensure freedom of navigation. This must, however, be reconciled with national requirements, and, in order to do so, we must not simply talk of a spirit of conciliation as we have been doing for twenty days. Our colleagues have said that we must make an effort ; but it seems to me that we have remained entrenched in our positions. We must not do that, otherwise, when we come to compromise, we shall do so like the wolf and the lamb in the fable ; that is to say, we must allow ourselves to be eaten up by the other party. I do not call that conciliation.

What compromise can we reach ? What formula can we find ? I should like us to make an effort to do so this very day. As I said just now, I have made several efforts at conciliation ; but my voice has remained the voice of one crying in the wilderness. If we go on in this way we shall come to the end of the Conference without having had any evidence of this spirit of conciliation.

Let us then try what we can do. Let us set aside principles and theories and history too. I do not want to suffer the deadweight of history ; I even venture to say that I will not suffer the deadweight of law. When we legislate we must face our problems in a practical spirit. We must see them as they really are. Napoleon was not a great lawyer. He sometimes even talked nonsense in matters of law ; but he did do something. He drew up his Code, and he even enunciated certain truths that the lawyers had not always realised. That was the true spirit of the legislator ; it was also the true political spirit, a spirit that took into account the interest of the peoples, to which Dr. Schücking referred just now.

If you wish to find a compromise, I am quite ready ; but we must do so on the two bases of freedom of navigation, without gifts, and respect for the rights of States ; and this last means respect for the interests of the peoples, since when I speak of national requirements I mean the interests of my own people.

M. Raestad (Norway) :

Translation : We have not come here as judges to define existing international law. Our task is to fill the gaps which may exist, to reconcile differences of view and, if possible, to make rules of law uniform ; at least, that is how I understood the original step taken by the Swedish Government which has brought us here.

If we take this view of our task — a task which is pre-eminently a creative one — we cannot, in my view, be stopped by any claim for a definite limit. Any limit fixed in the past was designed to meet existing practical needs. Accordingly, no limit whatever can be made a kind of idol before which everyone must bow down.

Sir Maurice Gwyer has just told us the history of the three-mile limit, while at the same time recognising that he did not wish to press his arguments. Nevertheless, it may perhaps be desirable to say a few words in reply, in order that my colleagues should not be left with a false impression.

What is the three-mile limit ? It is simply the distance of a league. What is the four-mile limit ? It is also simply a unit of measurement, also a league, only a different league. One is the English and the other the German league. This unit naturally came into early use in the regulations governing purely national questions. When we examine old decrees, for example, the Swedish decree of the seventeenth century mentioned by Sir Maurice Gwyer, the nautical mile is often confused with the league. We find it stated : here is a distance of three leagues ; that is to say, three miles. That is wrong, because the figure would have to be multiplied by four or six according to the case, so that, in the example I have just taken, the distance would be twelve miles or eighteen miles.

A distinction must be drawn between the use of this measure for a purely national interest and for international relations. Regarded as a rule to be applied internationally, the rule adopted by Norway and Sweden establishing the four-mile limit is older than the three-mile rule which is recognised by a number of countries.

The reason is simply that, in the seventeenth and eighteenth centuries, in the seas surrounding Norway and Sweden, wars occurred, and some belligerents claimed a very wide neutrality limit, while others decided upon quite a narrow limit. The limit of the " German league " was accepted as a kind of compromise.

The so-called " German league " was also the measure applied on our coasts for purposes of fisheries. It was not until much later, towards the end of eighteenth century, that the three-mile limit was adopted " internationally ".

I had to give you this short historical account to make the question clear, and I now come back to the main point with which we are concerned.

The document we produce here must fill the existing gaps and must have the effect of unifying national law. At the same time, it must have the elements of permanency, and for that reason we must take existing situations into account and realise that there may be exceptions to a general rule.

We are most anxious to come to terms, and we shall always regard it as our duty

to examine all proposals which may be submitted. Moreover, although it is undoubtedly desirable to come to terms, it is none the less true that a compromise couched in very vague terms will not produce any definite result.

For that reason, I attach a very definite importance to what has just been said by the Greek delegate. I will not give an opinion on that proposal now; it obviously brings very complex questions into play. Nevertheless, if we want to reach a practical settlement in our work, we must, I think, take some definite proposal as our guiding line, and the ideas set forth by M. Spiropoulos are an attempt to lay down such a guiding line.

If we continue to discuss in more or less vague terms we shall always remain where we are.

M. Spiropoulos (Greece):

Translation: I have before me the final clauses proposed by the Drafting Committee of the Conference. I will read Article K.

"*Article K.* — As from January 1st, 1936, any Member of the League of Nations or any non-Member State in regard to which the present Convention is then in force may address to the Secretary-General of the League of Nations a request for the revision of any or all of the provisions of the Convention."

Article L reads as follows:

"*Article L.* — The present Convention may be denounced after the expiration of five years from the date of the procès verbal mentioned in Article I."

And Article D reads as follows:

"*Article D.* — In accordance with Article XX of the Rules of Procedure of the Conference adopted on April 3rd, it will be for each Committee to pronounce upon the question of reservations."

I feel that the prevailing factor in the discussion is the fear of abandoning or sacrificing acquired rights. Certain delegates are afraid of creating a situation dangerous to their interests. The short extracts I have just read, however, will show you that the obligations States are required to undertake are not such as to endanger their vital interests for all time.

You have an opportunity of making reservations, and that is a very important provision. You also have the possibility of revision and — a third point which is still more important — the possibility of withdrawing from the Convention.

Thus, those States which have acceded to the Convention but which afterwards do not agree with the principles laid down will always have the right to withdraw. We must remember, then, that the obligations arising out of the Convention will not apply for ever.

A great deal has been said about the spirit of conciliation which is hovering over us. I only hope it will not crush us.

Some States say that they do not want to have rules imposed upon them on the pretext that a majority has so decided. Here we invoke the principle of the equality of States. I myself, representing as I do a small nation which would often have to invoke that principle, would not be prepared to allow a rule to be imposed upon me.

But what is the rule here? Who has imposed it? If there were a rule recognised by all, it would be a different thing; but that is not so. Some of us talk of six miles, others of three miles and others again of four miles. As you see, there is no unanimity.

It cannot possibly be said that the States which press for a six-mile limit are imbued with the spirit of conciliation; on the contrary, it is their stubbornness which is delaying the settlement of the problem.

Certain delegations have made concessions — the Portuguese delegation, for example, and the Latvian delegation and my own delegation. I personally have made a definite proposal. The Greek delegation urges the three-mile limit. It agrees, however, that the breadth should, for historical reasons, be fixed at four miles in the case of Sweden and Norway. It also takes the view that acquired rights in regard to fishing could be recognised. That, then, is a definite proposal.

The Greek delegation may also add that, if the States which demand a breadth of six miles refuse to accept three miles, it is perhaps because they fear that the three-mile limit will not be sufficient in time of war. The Greek delegation also agrees to accept the three-mile limit in time of peace only.

I think the Committee might take a definite decision on this question in a few moments' time. If those States which cling to their own views will take a step along the path of conciliation, I feel sure we could rapidly reach a result that could be accepted by all. I do not say this only of those who are pressing for six miles, but also for those who are pressing for three miles. It is this insistence which is preventing progress.

M. de Magalhães (Portugal):

Translation: I should like first to thank the delegates of Greece and Great Britain for their favourable consideration of the fisheries question, which is of such importance to my country.

The British delegate has said that this question could be solved by means of private Conventions between the States directly concerned. That is quite true, but we are here to conclude a general Convention; and, although there may be States which are not directly concerned with fishing, there are others which

are, and which could reach an agreement on the subject here.

If the Convention is to be worthy of the name, a general agreement must be reached.

Sir Maurice Gwyer has said that we must all respect the principle of freedom of navigation. We are all respecting it, but it no longer has the same meaning or the same scope as formerly. It is no longer an absolute principle, and there is another principle which is generally accepted and respected as well — that of the sovereignty of the coastal State over a certain belt of sea adjacent to its coast. We have therefore to reconcile those two principles.

From the useful and, indeed, very necessary discussion which has taken place in this Committee, I think I may deduce two ideas. The first is that no one wants to impose a single rule regarding the territorial sea on all the other States ; and the second is that no one wishes to make anyone any gifts. We must, however, make mutual concessions, since these are necessary to reach an agreement and draw up a Convention.

In this spirit, Vice-Admiral Surie submitted a proposal which, in my opinion, may obtain unanimous support. I should like to draw the Committee's attention to this proposal, and will say that I myself accept it.

I also take this occasion to pay a heartfelt tribute to this fair country whose hospitality we are enjoying, and which, having striven to carry civilisation into the most distant regions and having devoted itself to the development of international law, is giving us to-day proof of the international spirit which is absolutely essential to the work of codification that we are initiating here.

The Chairman :

Translation : What is the position ? We all agree, I think, that we must not interfere with acquired rights. We are seeking a compromise, but no one is thinking of offering gifts.

Great or small States, whatever they may be, all have the same rights, and no one dreams of disputing those rights.

The various opinions expressed here are, I think, no longer so uncompromisingly opposed as they were. Between the partisans of the three-mile limit and those who demand a greater breadth there is a possibility of mutual approach. The most definite suggestions in this respect are those made by the Greek delegation, to which other delegations give their support.

We have particularly noted what was said by Vice-Admiral Surie and M. Sjöborg, and I think our task must now be to give concrete form to the proposals which have been made with a view to a compromise. In that work we must ask the delegates who have spoken this morning to co-operate. We might discuss and take a vote on Monday morning on the formula which they work out.

If you agree to this proposal I should like, in conclusion, to quote certain words that were uttered by Sir Maurice Gwyer : We do not want to solidify opposition on one side or another ; we want to find some accord.

M. Spiropoulos (Greece) :

Translation : The Greek delegation can accept the Chairman's proposal. The essential things have been said on this question. If we continue to discuss we shall make no further progress. It would be better for us to think over what has been said and try to reach agreement. Each of us has taken up a position in the matter, and at the present moment we cannot hope to bring about any change of view.

I therefore propose that we leave the question at its present stage, and on Monday, after we have heard two or three speakers, take a vote.

M. Giannini (Italy) :

Translation : What action has been taken upon M. Sjöborg's proposal ?

The Chairman :

Translation : That depends on the Committee's decision.

M. Sjöborg (Sweden) :

Translation : I think there is no further reason to go forward with my proposal.

The day before yesterday I found that about half of the delegations made statements to the effect that they would like the territorial-water limit to be fixed at more than three miles. I think that statement is sufficient.

M. Giannini (Italy) :

Translation : With a view to a compromise, I should like to bring to the Committee's notice a formula which, however, I do not claim to have fathered. We might embody in the Convention in place of Bases Nos. 3 and 4 the following wording, subject, of course, to drafting amendments :

> " Every State has the right to fix the breadth of its territorial waters, up to a distance of six nautical miles."

I repeat that I do not offer this formula as coming from myself. It is anonymous.

The Chairman :

Translation : It is a proposal, however.

M. Novakovitch (Yugoslavia) :

Translation : When I spoke during the discussion, the line I took was in accordance with the formula which M. Giannini has just read. I did not make any definite proposal then, but I now make a formal request that every State should have the right to fix the breadth of its territorial waters up to a maximum of six miles.

M. Spiropoulos (Greece) :

Translation : The Greek delegation takes note of the anonymous proposal made by M. Giannini.

The Chairman :

Translation : And the paternity of this anonymous proposal is now established.

M. Spiropoulos (Greece) :

Translation : I am afraid that, that being so, the spirit of conciliation may receive the *coup de grâce.*

The meeting rose at 1.15 *p.m.*

FIFTEENTH MEETING

Monday, April 7th, 1930, at 9.15 a.m.

Chairman : M. GÖPPERT.

29. FORM TO BE GIVEN TO THE CONCLUSIONS OF THE COMMITTEE REGARDING ITS WORK.

Mr. Miller (United States of America) :

In the recent general discussions, a good deal has been said about international law and about history. I shall refer to neither. Nor do I think it necessary to speak specially of the position of my own Government in regard to the extent of territorial waters and the other questions that the Committee is now considering, for I think that its position has been sufficiently explained. The question to which I wish to refer is the present position of this Committee in regard to the question of territorial waters and the action that we here are to take.

Let me first of all recall that the entire procedure of a general international conference is rather new. Only within the last generation or so has it come into general use, and only within the last few years has it developed into the system of to-day. I need not emphasise the fact that this is called a Codification Conference, for I promised to refrain from entering the field of law.

What is the idea of an international conference ? It is the idea of accord, and when I use that word " accord " I do so very deliberately, as meaning something not necessarily formal but rather a community of spirit and of sentiment.

In our meetings here we have had very real manifestations of that community of accord. I would like to emphasise and to recall some of them.

Let me take first the principle of the freedom of navigation. That is a principle upon which we are all unanimously agreed. We have all here, at various times, unanimously repelled any thought of the idea of interfering with the freedom of the interplay of commerce the world over, which is one of the necessities of modern civilisation.

Another principle that we have considered and upon which I think we are also in accord is that of the needs of coastal States. We recognise that each State has its own necessities which, in principle, are the same for all, despite their possible divergence in detail, a matter to which I shall return.

Nevertheless, in connection with our discussions of these two principles, I think we have fallen into an error, at least at times. We have thought, perhaps, that the principle of free navigation was one principle, and that the principle of the needs of the coastal State was another, and that the two had somehow to be reconciled. This, I submit to you, is erroneous. The two principles are not principles of contrary interest but principles of common interest.

Free navigation is a necessity of the coastal State, and the needs of the coastal State are equally a necessity of free navigation. In our view, to separate the two ideas is to create an unreality. Where do ships navigate ? On the high seas ? No, from the port of one coastal State through the high seas to the port of another coastal State. Any other navigation is purposeless. If the necessities of the coastal State were not preserved, the ports and the harbours and the roadsteads would not be available for commerce and, if free navigation were not preserved, the ports and the harbours of the coastal State would be rendered largely or wholly useless. Any separation of the two interests involves reversion to the barbarous economic ideas of the past, when it was considered that commercial intercourse might be a benefit to one side and an injury to the other.

When, during these discussions, we have considered the needs of the coastal State, we have found an extraordinary diversity of situation the world over, and through it all

has run this unreal division of the two principles which I have mentioned.

As regards the diversity of local situations, however, we have had put before us a really extraordinary amount of useful information, and I think I may speak for other members of the Committee as well as myself when I say that some of us have learned much from our discussions. For example, we have been told something of the unique coast of Norway ; we have had visualised for us the unusual situation of the capital city of Sweden ; we have thought of the Baltic, the North Sea, the Sound and the Belts ; we have considered the waters of the Adriatic, the coasts of North Africa, the lands along the Red Sea, the continental shelf adjacent to Portugal, the waters of Iceland, the blocked strait to the south of India and the islands of Japan. We have even been told that, in a country as new as the United States, there are to be found geographical peculiarities, and we have discussed the moving islands at the mouth of the Mississippi.

We have talked of bays and of islands, of archipelagoes and of straits without, at times, perhaps, being either sure of the definitions of our terms or of the terms of our definitions. We have found straits between islands and islands within straits. We have decided, tentatively, as least, that it takes three islands to make a group without ever approaching the question whether a group is always or only sometimes an archipelago. Various aspects of the question of bays have been before us and, while an attempt has been made — I think I may say a rather notable attempt — to obtain a scientific and complete definition, we must still recognise that there are indentations of the coast which may perhaps require special treatment although they are not to be called, in a technical sense, bays. We have seen that all of these words which are descriptive of various kinds of waters have a bearing upon the drawing of the base-line for the territorial sea.

Furthermore, we have had before us questions which, if not more important, are at least less technical in description. Human life is very largely sustained by the products of the sea. The interests of many populations are deeply bound up with the fisheries ; and, as soon as we commence to talk of the right to fish, we find that we are talking also of the necessity of preserving the continued existence of the sea-life.

The problem that we have had before us is really the problem of describing in the words of jurists a chart of the world, taking into consideration the rights, practices and economic needs of the coastal populations ; and, even beyond all this, we have had to think of the question of national security as well as to mention and lay aside the fact, if I may put it so, that the air is a part of the sea.

After this rather long introduction, the question I want to ask you, and attempt to answer, is what we are to seek to do in this Committee. We have reached a stage in our deliberations where the remaining time is very short and where the necessity for a definitive and immediate decision is apparent. I do not minimise the value of our discussions ; on the contrary, I do not think their value could well be exaggerated. All of us have seen in a new light the problems involved in territorial waters. All of us have learned much from the views advanced by others ; all of us realise the difficulties of this important subject better than we ever did before.

We cannot hope to solve this problem definitely here and now. Putting on one side all the divergent views that are held about the extent of the territorial limits, the contiguous zone, fisheries and all the matters that have been discussed up to the present, we cannot here seek to describe, even if we wish to do so, a chart of the world and to set forth exactly the rights and obligations of the States of the world in respect of the waters, the bays, and the thousands and thousands of miles of coast.

I said that I would put before you a concrete proposal, which is this. I ask that we should now abandon all thoughts of a document signed and sealed, or to be signed and sealed, and that we should draw up for submission to our respective Governments for their future consideration and study a paper, I care not by what name it be called, perhaps a report, which would embody the result of our studies and deliberations — a document which would show, and emphasise in showing, those great principles upon which we are in complete accord ; which would point out, while indicating their relative unimportance, those divergencies of views which may well be only temporary ; and which would particularly bring before the attention of the Governments the commercial and economic problems involved in this whole question, all of which, even when they seem to be of particular interest to one people, are none the less of common interest to all the peoples of the world and to their Governments.

M. Giannini (Italy) :

Translation : As our British colleague remarked on Saturday, although we have reached a certain measure of agreement, it would be difficult to turn this to account at the present time. Mr. Miller has to-day made a practical proposal. It is now Monday. We hope to leave on Saturday. What then is the best thing to do ?

I do not oppose the solution put forward by the United States delegate, who has made an historical survey of our work and has given us what we may term a photographic impression of our long discussions.

I should, however, like to draw attention to certain points in regard to which agreement is essential. In the first place, I think we are

all agreed that any restriction of the freedom of navigation should be rejected, except where this is justified by some special reason. But we also agree that the freedom of navigation should be reconciled with the rights of the State in its coastal belt.

In substance, there is no real conflict between the two principles. Except as regards a few small points mainly of a theoretical nature, we agree that the State possesses sovereignty over its coastal belt.

We are also agreed that there is no international rule which lays down the breadth of territorial waters. There are different situations in different countries, all equally justifiable. The three main solutions are the three-mile limit, the four-mile limit and the six-mile limit. There are some intermediate solutions, but they have very limited support.

The third point on which we must record agreement is that there are historic situations sanctioned by long usage in regard to so-called " historic " bays. These situations have not even been considered, because each has its special aspect. We have christened these bays " historic " for the sake of convenience, but the word is in no sense accurate or traditional.

Neither are there any differences of opinion with regard to straits and islands. I should, however, like it to be mentioned in the report that we have not touched on the question of floating islands, which will be an important problem in the near future.

The Chairman :

Translation : Reference has been made to artificial islands.

Mr. Miller (United States of America) :

The words " moving islands " were used instead of " floating islands ".

M. Giannini (Italy) :

Translation : There is one other point I should like to see clearly indicated in the report, namely, that States which have accepted a breadth of three miles have also recognised certain rights outside that belt. Neither must we omit to mention the fact that certain delegations have claimed rights in the adjacent zone, which must not be allowed to convert that zone into a disguised territorial belt.

Many delegations find it very difficult to determine the conclusions which emerge from our lengthy discussions, and this is not to be wondered at. The original aim of this initial codification was to confirm universally recognised principles of international law.

We have seen that an agreement must take the form of a Convention. When some forty States are concerned a Convention must necessarily represent a series of compromises. When we first examined the problem to ascertain the length to which those compromises could go, we encountered difficulties which certain delegations regard as insurmountable at present, either for special or general reasons. I think that in this connection we need not attempt to justify ourselves. One fact is certain, and that is that several delegations are not in a position to arrive at conclusions during the present session.

What then is to be the outcome of these lengthy discussions ?

Mr. Miller proposes that we should prepare a report which would be a record of what has been said and agreed to. If this report is to be, so to speak, a perfect photographic record of our discussions, I concur. Such a report would prepare the ground for the continuation of our work at another session of this Conference, as our British colleague put it on Saturday. In that case, however, I should like it to be clearly stated in the report that the rules drawn up are merely of a provisional nature, because no final formula was reached, and that they represent compromises in regard to certain problems which we endeavoured to solve by that means. The nature of certain of these rules must be emphasised, because they must not be considered purely and simply as a statement of the existing rules of international law.

I understand that the present proposal is that we should bring our discussions to a close and decide to continue them later at another conference. Are we prepared to adopt that solution ? The problem with which we have been dealing is of vital importance to national life, especially in countries which, like my own, depend entirely on the sea for their existence. Moreover, recent agreements, both bilateral and multilateral, have shown that States which have no sea-coast consider that they should also be entitled to fly their flag on the sea as well as on land. The question, therefore, is one of universal importance, and strikes so deep into the roots of national life in all countries that we should not feel unduly pessimistic at our inability to reach definite conclusions at this stage.

Now that we are on the point of completing our work without being able to embody the results in a formal instrument, we can comfort ourselves with the thought that we have done our duty and have made every effort to reach agreement and to see each others' point of view. If we cannot at present assume the responsibility of concluding a Convention, we have nevertheless done our utmost to push forward the work in a most conciliatory — I might even say a mariner's — spirit, because I should like to conclude with the words of our great poet : "*Navigare necesse est, vivere non est necesse*".

M. Spiropoulos (Greece) :

Translation : We have reached a most critical point in our discussion and the Committee is in

the position of the general staff of an army after a battle has been lost. A few days ago we separated with the hope of being able to codify the rules in regard to which we were in agreement. The vital problem of the breadth of territorial waters was, however, still outstanding; but we all felt that, if we could not agree upon this problem, the other articles could be adopted, the problem of the breadth of the territorial sea being left for future generations to settle. However, the two previous speakers have left us little hope of an agreement, and it looks as though we shall have to acknowledge failure.

The United States representative has proposed that, instead of concluding a formal Convention, we should agree upon a report which would be sent to Governments for examination. The Italian delegate supported that proposal. What will be the fate of that report? There is no need for me to answer this question because you are all aware that reports submitted to Governments disappear. Government departments may or may not glance at the document; but that will be all.

In view of this fact, what course ought we to take? Is there still any hope of concluding a Convention? If I say "Yes" you will tell me that I am an optimist, and if I say "No" you will accuse me of being too pessimistic. As a matter of fact, I have not entirely abandoned all hope; but, before taking a decision, we must reflect very carefully.

Do we wish the whole of our work to be cast aside, or are we going to try to save something? If we do wish to preserve any articles, we shall have to proceed with great caution. It was intended that the codification work of our Conference should form a complete whole, and there is a close connection between the various rules drawn up. It might be a dangerous matter to accept some and reject others.

If we wish to retain some of the results of our work we must decide what rules it is possible to maintain, because, as the Italian delegate pointed out, most of the solutions proposed represent compromises. It is obvious that certain rules which we have formulated are not entirely in accordance with existing law. Some States have made concesssions in return for other concessions.

For instance, we have established the principle of full sovereignty, in virtue of which the territorial sea has been assimilated to national territory. I am not sure whether this assimilation is altogether in conformity with the existing law. During our discussions, as you know, delegates gave way on certain points with the idea of limiting the extent of the coastal State's rights. Consequently, if we simply codified the articles on which agreement has been reached, we should run the risk of departing here and there from the existing law.

If you ask me what I propose now, it is that we should review the position once again and see whether it is possible to find a certain number of clauses which can be taken apart from the rest and which form a complete whole — whether, for instance, it is possible to keep certain rules determining the jurisdiction of a State in the territorial sea. We could then make those rules into a Convention. However, the problem needs to be very carefully considered, as those rules are very closely connected with other principles.

I agree with M. Giannini that the work of codification ought not to be broken off, and that we should draw up a report dealing with the remaining rules. This report should summarise the discussions in the Committee, and should not merely be regarded as an instrument to be sent to Governments for perusal, but mainly as a basis for the continuation of the work of codification.

It is obvious that, at a first Conference for the Codification of International Law, many difficulties are bound to arise, and, in my opinion, we must take care not to throw away what has already been achieved. Perhaps the problems selected were not sufficiently ripe, and more success might have been obtained if we had chosen other questions.

As regards our work, although there are many problems in regard to which agreement has not been reached, there are others which have proved to be capable of solution, and, in my view, we ought to do nothing which would create a feeling of despair outside this Conference. We must have something concrete to show, and must endeavour to prepare the ground for a further conference at which our work will be continued.

If I may state my views as to the value of our discussions, I would say frankly that, if we leave our work in its present state, we shall only create a certain confusion in regard to the existing law. Can a judge, who, in future, is called upon to decide a question of international law, regard our discussions and the statements which have been made here as the expression of the legal concepts of States and of the principles of international law? I should not venture to give an affirmative answer.

As I have already stated, the majority of our discussions were governed by the desire to find a compromise. I do not think, therefore, that they are of very great value as an interpretation of existing law. It will hardly be possible for a judge to be guided to any great extent by what has been said here, because most of our discussions have been influenced by the hope of reaching an agreement, and in many cases the existing law was passed over for that purpose.

To sum up, I would repeat that we must endeavour to select some Bases of Discussion

which can be grouped together and embodied in a partial Convention. As regards the others, we could act on M. Giannini's suggestion and draw up a report.

M. Urrutia (Colombia) :

Translation : The question of the territorial sea is of great importance to my country. Colombia has more than 3,000 kilometres of coast-line on the Pacific Ocean and that part of the Atlantic Ocean known as the Caribbean Sea. We are also on both sides the immediate neighbours of that great centre of world maritime activity — the Panama Canal. In view of the fact that more than 7,000 merchant ships of different nationalities pass through that Canal each year and that their number is steadily increasing, the future importance of the Colombian coasts on both oceans can easily be imagined. We have also some very large ports and navigable rivers flowing either into the Pacific or the Atlantic.

Under a Colombian law, the breadth of our territorial sea was fixed at twelve miles. This law was based on certain practical considerations and on national requirements. There are several large bays along our coasts, as well as islands, islets and reefs. For a great distance the sea is very shallow, and is full of reefs, navigation being in some cases impossible even for small boats.

Colombia also possesses fisheries, the most important being the pearl fisheries in the Atlantic. For these, and for the exploitation of our other natural resources, such as petroleum, it was considered necessary to have a fairly wide belt of territorial sea.

Certain American countries, such as the Argentine, Chile, Salvador and Ecuador, have fixed the breadth of their territorial sea at one league, *i.e.*, three marine miles, but with an adjacent zone of four leagues for the exercise of police and Customs measures.

This combined system, consisting of one zone for the territorial sea proper and of another adjacent zone, which has been adopted by certain American countries, was also recommended, on the proposal of the distinguished Chilian jurist, M. Alessandro Alvarez, by the International Law Association at its session held at Stockholm in 1923, and by the Institut de droit international at its 1928 session, also held at Stockholm.

My Government is in favour of this combination of two zones, which has obvious advantages and reconciles the interests of world navigation with those of coastal States.

My Government is of opinion that a general agreement, fixing the breadth of the territorial sea, would represent a substantial progress in international relations, and earnestly desires such an agreement.

In conformity with my instructions, I am prepared to accept a compromise proposal which would facilitate this agreement. Some of my colleagues have submitted proposals which might serve as a basis for a compromise. If an agreement in regard to the breadth of the territorial sea and the adjacent zone is unfortunately impossible, we could still draw some profit from the excellent work which has been done here by signing a Convention on all the other points on which agreement has been reached, an agreement in regard to the breadth of the territorial sea being postponed until such time as this has been made possible by diplomatic negotiations.

In conclusion, even if we do not succeed, in spite of all our efforts, in signing a Convention on the points in regard to which agreement has already been reached, we cannot but say that this Committee's work has been fruitful. Never before has there been a political or scientific conference at which the position of the various nations of the world in regard to this question of the territorial sea has been defined so clearly as has been the case in this Committee.

This clear indication of the respective positions, interests and laws, is bound to be of great value, and will sooner or later facilitate the agreement which we all desire. In any case, my delegation earnestly hopes that the work may be brought to a successful conclusion, and, on behalf of the Colombian Government, I am prepared to accept any formula which obtains the support of the majority and will facilitate agreement.

M. Rolin (Belgium) :

Translation : After making determined efforts for two weeks to try to arrive at agreement, I cannot deny that I should be very loath indeed to content myself with a report. Like Mr. Miller and M. Giannini, I shall certainly retain agreeable recollections of our learned and cordial discussions, which were facilitated throughout by the tact of our Chairman.

We must, however, consider the position when we leave this Committee and return to our respective countries. Our Governments will most certainly approve of the way in which we have carried out our mission, for we have done our utmost to reach agreement. But public opinion, and especially legal public opinion, is bound to regard the negative result of this Committee's work — coming so soon after the failure of the Conference on the Treatment of Foreigners and scarcely mitigated by the partial success of the work of the Committee on Nationality — with even greater scepticism, and this will make it harder for those of us who are dealing with the codification of international law and who wish to arrive at definite formulas on this subject.

I am sure we all feel the same about this, and if we see any possibility, either at present or in the near future, of achieving positive results we shall gladly seize the opportunity. We do not desire superficial results, but are anxious to do work which is of value. We

must therefore endeavour in all good faith to draw up the text of a Convention, even if it is a restricted Convention, which will be of real use to the various countries, will represent a substantial progress in international law, and will in no way prejudge the solution of problems on which agreement has not been reached.

I would not for an instant be guilty of the hypocrisy of asking you to accept some formula which I did not wholeheartedly defend, approve and regard as of value.

I would therefore state frankly that I have been reluctantly compelled to adopt, as regards a part of the problem, the same conclusions as those expressed by M. Giannini and Mr. Miller, namely, that agreement is not possible on the breadth of the territorial sea.

Why is this? We must not be under any misapprehension on this point. It is not because the work was insufficiently prepared. On the contrary, I think we must acknowledge that it would have been impossible for us to have fuller documentation or more definite data as to the intentions of the States participating in this Conference and their instructions to their delegates than were given us in the Brown Book.

Neither is lack of time the reason. I feel convinced that, even if we remained here for three months, it would be quite impossible for us to reach agreement in regard to the breadth of the territorial sea, because the problem cannot be solved, at all events at present, by the method of codification. I feel grave doubts as to whether it will be possible to settle it by that method even in the distant future.

In reality, what has to be done is to restrict the breadth of the territorial sea around all countries. As jurists, we are all concerned with private law, and we are instinctively and almost naturally led to think of the delimitation of the private property of individuals and to desire and aim at the establishment of similar rules for defining this ownership of the territorial sea.

It is obvious, however, that this is an entirely different problem, and that it is very difficult to compare the two. Mr. Miller has reminded us of the infinite variety of coasts and of the various needs and difficulties of States.

We must also bear in mind the important fact that, instead of being faced with hundreds of thousands or even millions of different cases all very much alike, we are dealing with some forty to forty-five maritime States. In many cases, the examination of these various special cases is of interest only to a very small number of States. For instance, as far as Belgium is concerned, the breath of the territorial sea in most parts of the world is a matter of indifference to us, and in all probability we should not even enter into diplomatic negotiations with a view to obtaining any modification.

By what method, therefore, should this problem, which we have endeavoured to solve by means of an abstract formula, be dealt with? Would it not be best for it to be settled by special agreements negotiated between the States directly concerned and tacitly approved by the others? By that means juridical certainty, which we have vainly striven to obtain here, would be secured.

In this connection, I propose at the close of our work to ask, not for the establishment of an Office, to which I know there are objections in certain quarters, or for the creation of an obligatory procedure for an official and definitive delimitation of the territorial seas throughout the world, but simply for an enquiry, as a practical conclusion to our work. We could apply once again to the League Secretariat, as we have so often done in the past, and ask it to carry out this enquiry. We know the views of States regarding the territorial sea, and there is no necessity for any reaffirmation of these views, which at present conflict with each other. We could, however, deal with the method of drawing base-lines. Maps could be sent to maritime States for their observations.

That is all I want. These observations would be transmitted for our information. This would not give us preferences drawn up in the form of abstract rules, but we should ascertain the concrete wishes of States and the base-lines which they desired. We should then see on what points they differed and to what extent the interests of navigation or the private interests of other States might be adversely affected by those claims.

I was very much struck during our numerous discussions by the fact that a certain formula submitted for the definition of bays at first called forth unanimous protests, as it appeared to be so easily capable of abuse. When, however, we discovered the moderate and reasonable manner in which this formula — or, rather, this absence of formula — was applied in practice, we found that the State which had proposed the rule had a base-line which appeared to be quite acceptable to the great majority of the delegations.

Why, then, must we have a formula?

Personally, I am quite prepared to do without it. In dealing with this matter, it is not our wish to lay down abstract rules at all costs. What we want is juridical certainty. If we can obtain this juridical certainty by other means than codification, why should we not do so?

Consequently, I should feel no regret if it were possible to employ other means and should even regard this as a practical solution of the problem.

I now come to the other part of our work. While, as regards the breadth of the territorial sea, I suggest that the problem should be settled by negotiation and possibly, in certain cases, by judgments and arbitral awards, since many of us are reciprocally bound by arbitration clauses and agreements, I do not propose such a course in regard to the other series of problems, namely, those dealing with the rights and obligations of coastal States and the freedom of navigation.

I have been looking at Document No. 26, in which we have enumerated thirteen articles, some of which gave rise to discussion, although agreement was, I think, finally reached. These were the articles defining the manner in which the sovereignty of the coastal State could be reconciled with the freedom of navigation. In certain cases, powers of jurisdiction were involved, as M. Spiropoulos remarked; in others, we specified the manner in which the coastal State would exercise its rights without injuring the interests of navigation.

At first sight, the adoption of a body of rules would appear to be of value. I know the objections which will be raised. You will say that it is all very well to define our rights and obligations in the territorial sea, but what is the breadth of that sea? I admit that this first objection — for there are others — made me hesitate. Yesterday, however, when the idea of a limited Convention first occurred to me, I decided that it was only a superficial objection. The outcome of our discussions is that States actually have a territorial sea, and, consequently, there is a minimum undisputed space in which these rules could be applied.

In view of the fact that agreement has nevertheless been reached between a large number of States in regard to their territorial seas without its being necessary for us to confirm that agreement, is it not reasonable to suppose that a large number — I might even say the majority — of the difficulties which arise will occur in the territorial sea which is not disputed?

Let us take some of the great naval Powers: the United States of America, Great Britain and the Dominions and Japan. Those naval Powers are in agreement with regard to the breadth of their territorial sea. Can you tell me that a codification Convention regulating their rights and duties as coastal States would be of no importance?

To take the coasts of other States: might not incidents occur within the first undisputed three-mile limit in regard to which our Convention would clearly be applicable?

The other objection which I anticipate, and which has already been put to me in conversation, is as follows: we cannot weaken the reciprocal positions of our delegations in regard to the breadth of the territorial sea. If we leave this question open in a Convention, countries in favour of narrow limits or of allowing certain prerogatives to be exercised in an adjacent zone must not have their position weakened.

I agree that these apprehensions are perfectly justifiable. I should also be the first to admit that if, after examination, we are unable to arrive at a formula guaranteeing the maintenance of our juridical principles in regard to these problems, we should then renounce the action which I just now suggested as likely to be of value.

I feel, though, that this problem is capable of solution. I have in mind the general clause embodied in all Conventions, and, in particular, the formal clause drawn up by the Drafting Committee of our Conference, which provides that the inclusion or omission of principles and rules in the Convention shall in no way be deemed to prejudice the question whether they do or do not form part of international law. As regards the territorial sea, all we wish to do is to state that, in the absence of any reference in our Convention to the breadth of that sea and rights existing outside the territorial sea, different views may quite legitimately be put forward.

We have not succeeded in affirming rights in adjacent waters, but it is in that direction that the work of international codification will have to be continued. We have, however, succeeded in formulating rules which can be applied in a minimum space. Are we going to reject them?

As I said just now, I am very sceptical of the possibility of codifying rules dealing with the breadth of the territorial sea; but I am absolutely convinced that, in regard to juridical rules, codification is essential, and I think that we have suceeded in carrying out this necessary work.

Must we, then, resign ourselves, on leaving this Conference, merely to stating that there is no other solution than to abandon the results obtained and to submerge them in a report, which will really be only a confession of failure and of our inability to settle another part of the problem.

M. Raestad (Norway):

Translation: I have often had occasion to admire the good sense and independence of our United States colleague, Mr. Miller, and his detachment in regard to legal theories. He now proposes that we should draw up a report recording those principles on which agreement has been reached. In my view, such a report would present many difficulties. What, in fact, are the principles on which we are agreed? There are philosophic principles which have been admirably defined by Mr.

Miller and in regard to which the members of the Committee are more or less unanimous. But there are also legal principles. Are we agreed in regard to those principles?

We have been working with a Convention in view. To put it differently, we have been thinking in terms of a Convention and not in terms of legal principles. Consequently, I am very much afraid that, if we endeavour to embody in a report the legal principles on which we believe ourselves to be agreed, we shall have the same confusion and differences of opinion. Although I very much deplore it, I fear that, in spite of our goodwill, we shall not succeed in reaching an agreement on those principles. Moreover, if the object of this report, as M. Giannini remarked, is to give a photographic survey of our work, the Minutes are sufficient for that purpose.

I now come to the second proposal. Is it possible for us to draw up a partial Convention dealing with the legal status of territorial waters? We have heard the observations of M. Spiropoulos and the eloquent defence of M. Rolin. Unfortunately, however, this path is also closed to us. We came here to draw up, if possible, a comprehensive Convention including both questions relating to the breadth of territorial waters and questions relating to the legal status. These two groups of questions are so closely connected that I do not think it is possible to separate them.

It is true that we are more or less in agreement as regards questions relating to the legal status, but that was always on the supposition that they were going to be part of a general Convention. I am afraid that, if we drew up a partial Convention, we should be placing further obstacles in the way of the work of codification, and many States would probably be unable to ratify such a Convention. In the meantime, questions still outstanding would be more or less left on one side. For these and other reasons, I do not think it is possible for us to establish a partial Convention dealing with the legal status.

I now come to a third proposal, which was made by M. Rolin, namely, that States should be invited to indicate the manner in which they desire the base-line to be drawn on their coasts. If this is to be regarded as an isolated proposal, I do not think it is acceptable for several reasons. If we isolate this question, we shall give the impression that the problem of base-lines was the main cause of the deadlock, whereas that is not the case. The principal questions on which agreement was impossible were the breadth of terriotrial waters and of the adjacent zone.

The question of base-lines is certainly of great importance, but it was not the central point of our discussions. We have learned that some countries, such as France, desire to draw their base-lines across the indentations of the coast; that, I think, is merely a secondary question. There is also the case of the historic waters of Norway and Sweden; but, as we only desire the maintenance of the *status quo*, that point presents no difficulty either.

If M. Rolin's proposal is to remain an isolated proposal, would it not be inconsistent to ask Governments to state their definite wishes? The decrees and laws laying down base-lines are not texts expressing a desire; they are essentially final. As in the past, we shall continue to publish decrees and laws relating to base-lines in the same way as other decrees and laws. The States concerned may make any observations they think fit, but we shall not submit those decrees and laws to a sort of plebiscite. Incidentally, I would point out once again that my remarks are based on the assumption that this is intended to be an isolated proposal.

Those are the points which I cannot accept in the proposals which have just been put before us. I now come to the positive question: What ought we to do?

It is most important that our work should not be destructive but constructive. It is most important that, after the termination of our Conference, there should not be more confusion in these matters than there was before. This, I take it, is what Mr. Miller, M. Giannini and other speakers wish to avoid.

Our discussions have shown that there are certain points on which we are more or less in agreement, and on which we could agree if it were possible to frame a general Convention. These are in regard to the legal status. There are also other questions, such as the breadth of the territorial sea, which we have not been able to settle. I do not think we can leave the question there, otherwise it will be said in regard to the question of territorial waters, as it is in Dante's *Inferno* "*Voi ch'entrate lasciate ogni speranza*".

We must not give the impression that it is impossible to codify the question of territorial waters. After continuing our efforts a little longer, we may be obliged to admit that it is impossible for the moment. I do not think I am foolishly optimistic. We have worked here in a calm atmosphere; we have co-operated in the work of codification and have harmonised our views on so many points that we have no right to say now that the problem cannot be solved.

For this reason, I cordially support the proposal that a further session of the Conference should be convened or that the Council of the

League of Nations should summon another Conference. I suggest that we should adopt a resolution in more or less the following terms :

" The Conference decides that the articles in regard to the legal status of the territorial sea, considered as part of a general Convention, shall be submitted to the Governments as a preliminary draft. . . "

That would restrict the field of the enquiries to be undertaken by Governments to the question of the breadth of territorial waters and of the adjacent zone. We might go on to say :

" The Conference recommends the Council of the League of Nations to invite the Governments to continue, in the light of the discussions of this Conference, their study of the question of the breadth of the territorial sea and the adjacent zone.

" The Conference recommends the Council of the League of Nations to convene a further conference as soon as it is considered expedient."

This new conference would have the same object as the present one ; that is to say, to frame a Convention in regard to the whole body of questions relating to territorial waters, *i.e.*, the breadth of the territorial sea and the adjacent zone and possibly the legal status of territorial waters.

That is not a hard and fast proposal. It is merely an outline of my views. If, however, I am supported — and I am assured of some measure of support as I have endeavoured to reproduce opinions which have already been expressed — I shall submit a definite proposal later.

Dr. Schücking (Germany) :

Translation : In spite of the fact that we have already listened to-day several funereal orations, I quite agree with what has been said by M. Spiropoulos and M. Rolin. The preparatory work with a view to the codification of this matter has been going on for five years, during which time the question constantly arose whether that codification was desirable and realisable. My colleague, M. de Magalhães, will certainly be able to confirm my statement that the words " desirable and realisable " were more often repeated than any others in all the discussions of the Committee of Experts. That Committee appointed a Rapporteur, who gave an affirmative reply. The majority of States replied to the report submitted by that Committee. Those replies were examined by the experts, who finally gave an affirmative decision, and a report to that effect was submitted to the League. The latter accordingly included this item on the agenda of our Codification Conference, thus showing that the League as a whole regarded this work as realisable. For that reason, we cannot abandon the whole work of codification in this matter owing to the great difficulties with which it is surrounded.

In accordance with M. Spiropoulos' suggestion, I propose that a Sub-Committee should be appointed immediately to consider whether there are any articles in our draft which could be embodied in a small Convention dealing, for instance, with the competence of the coastal State in matters of jurisdiction as regards foreign merchant ships in territorial waters.

M. de Magalhães (Portugal) :

Translation : After fourteen plenary meetings of our Committee, and in spite of the work of the Sub-Committees and of certain conciliatory or compromise proposals, which gave us a certain amount of hope, we are forced to admit that agreement on the basic question of the territorial sea is impossible. This result is, of course, very regrettable, and I sincerely deplore it. There is, however, some compensation in the fact that our calm discussions, which have maintained such a lofty tone, have helped to elucidate the problem and have shown that it is absolutely essential to continue the work of codification in regard to the question of the territorial sea.

The present setback is, of course, all the more regrettable in that it will encourage pessimists and discourage optimists. But we must not allow ourselves to be discouraged or to discourage others, and it is for that reason that it is so essential that we should state categorically that the work of codifying the law in regard to the territorial sea should be continued. We all hope this work may be brought to a successful conclusion in the near future.

Mr. Miller has proposed that we should terminate our work by the presentation of a report. That idea was carried further by M. Giannini, who said that this report should be in the nature of a photographic survey of our work. It seems to me that this report already exists in the Minutes of our meetings and the proposals submitted. If we do draw up a report, however, we must be careful not to reopen the discussion ; we must simply add what is necessary to complete the survey.

On the other hand, M. Spiropoulos and M. Rolin have suggested a partial Convention. I regret that I cannot accept that proposal. In addition to the objections already formulated, and, in particular, the fact that a partial Convention might actually hamper the future work of codifying the law in regard to the territorial sea, there are other objections also.

M. Rolin told us that this partial Convention might be useful because it would fix rules to be applied in an undisputed area. This undisputed area is the three-mile limit. In that case, a partial Convention would strengthen the position of the advocates of the three-mile limit and would weaken the position of those who prefer a wider area, which, as M. Rolin himself admitted, cannot be allowed. The articles relating to the legal status of the territorial

sea formulated by the Legal Sub-Committee are the result of mutual concessions made by certain delegations on the assumption that there was going to be a general Convention.

If it is not possible to establish a general Convention, neither is it of any use to frame a partial one, in view of the fact that certain delegations made concessions for the express purpose of facilitating the establishment of a general agreement. It was with that object in view that I myself accepted certain rules concerning the juridical regime of the territorial sea; that is to say, on the understanding that they would form part of a general Convention — a body of rules regulating the whole question of territorial waters.

Moreover, owing to the limited scope of this partial Convention, it would probably give rise to unfavourable criticism and it might even be said ironically that the mountain had brought forth a mouse.

For all these reasons, it is impossible for me to accept the idea of a partial Convention; but, as I have already stated, I am strongly in favour of the continuation of the work relating to the codification of the territorial sea and support the proposal that the above-mentioned articles should be submitted to Governments as a preliminary draft of one part of the future Convention concerning the territorial sea.

This would form a connecting link between the work of this Conference and that of the conference to be convened, we hope, when the League Council considers it expedient.

I therefore support most heartily the proposal made by M. Raestad, and also the first part of M. Rolin's proposal, namely, that we should invite Governments to trace the base-lines of their coasts and distinguish between inland and territorial waters.

I see one danger, however, in M. Rolin's proposal. He suggests that each Government should communicate its base-line to the others for their observations. That really amounts to saying that, as States have not been able to agree at The Hague, they should fight the matter out. The last part of M. Rolin's proposal invites Governments to quarrel or, as we say ironically in my country and possibly in others also, it invites them to join the waltz. Personally, I cannot accept that part of the proposal.

I would repeat that the first part of M. Rolin's proposal seems to me to be excellent. It should, however, be combined with M. Raestad's proposal that the base-lines should be sent to the League Secretariat. At the same time, the League should be requested to proceed with the work, and, when the time appears to be ripe, to summon a further conference to continue the codification of the territorial sea.

My friend Professor Schücking, the delegate for Germany, has reminded us of all the work that was done prior to the present Conference, and emphasised the fact that the Committee of Experts had stated that a Convention on this matter was desirable. The same opinion was expressed by the League Council and Assembly, which selected this question as one to be dealt with by a first Conference for the Codification of International Law.

We must not lose sight of this fact, but we must not go any further. We should reject the idea of a partial Convention. I am sure it is not what Professor Schücking desires. We ought, however, to turn to the fullest possible account the work that has been done here and retain the points on which provisional agreement has been reached, this agreement being regarded as a preliminary draft to serve as a basis for the conference which is to meet later to deal with the question of the territorial sea.

To sum up, I wish to state that I support the first part of M. Rolin's proposal on condition that it is combined with that of M. Raestad.

Dr. A. W. Brown (Great Britain):

Perhaps you will allow me first to express the keen regret felt by Sir Maurice Gwyer that, for reasons of health, he has been prevented from taking part in this most important debate. I am sure that his absence is a serious blow to the interests of my country, and I think it will also be agreed that it is a loss to the Committee itself.

Speaking, however, on his instructions, I have to say that, in the view of the Government of the United Kingdom, it is now clearly impossible for this Conference to conclude a Convention which the delegate of the United Kingdom could sign.

It was clear to many, I think, from the reports collected in our preparatory documents, and it soon became evident from the discussions here and in the Sub-Committees, that the term "codification" was being interpreted in a large sense, and that the majority of the delegates desired not so much to codify those rules of international law which undoubtedly exist on the subject of territorial waters, as to draw up a body of principles which should express the law which the delegates would like to see adopted and applied in the future.

The delegation of the United Kingdom has taken part in the discussions with the desire, so far as possible, to reach a common accord. I think it may be said that no nation has gone at least further than our own in that process of give and take by which an acceptable compromise may be reached. We have agreed provisionally to a number of articles which would have constituted a very great and important advance in the science of international law. But that agreement and the concessions which have been made by the British delegation were conditional on our reaching a general agreement on the other important principles on which, unfortunately, it has now become only too apparent that agreement is impossible.

We are therefore in complete accord with Mr. Miller and with M. Giannini that the best that can now be done is to draw up a report for the consideration of the Governments. If that report proceeds along the lines which we have in mind and which I think are also the lines proposed by the previous speakers, it will indeed be a mile-stone in the progress of international law. We have, in fact, I think, agreed on one very important principle which was referred to by M. Giannini this morning, namely, that the common interests of all the nations of the world require the fullest freedom of navigation, and that therefore it is for any State which desires to limit that freedom to justify its interference with navigation.

For the reasons I have given regarding the lines along which this Conference has worked, the fact that we have failed to agree on a statement of what the law on any particular point should be in the future does not mean that no rule of international law governing that point exists at present.

Finally, perhaps I may say that we have listened with great interest to M. Rolin's suggestion of the exchange of charts containing the base-lines proposed by various States, and it seems to the British delegation that that suggestion, if found practicable, might be adopted with advantage.

M. Spiropoulos (Greece):

Translation: It seems strange that, after the work of codification has been in progress for four weeks, we should now question the possibility of codifying the regime of territorial waters. I am somewhat surprised at this, because we have already codified a large number of Bases. This question was not raised at the commencement of our work. Why is it raised now when we have codified nearly all the Bases?

I do not deny that there are certain reasons which have led us to doubt whether codification is possible, but I feel convinced that these are mainly psychological reasons. Difficulties arose in another Committee, which proposed to abandon certain drafts and finally decided not to conclude a Convention, and the atmosphere has now spread like a contagion to this Committee. What is going to happen? After discussing the matter here, we go into the corridors where we form groups, and in the end there is a crisis and the Committee is seized with sudden panic. Two days ago everybody was satisfied. After carrying out a somewhat exhausting task we were going home to rest in the hope of continuing the next day. Now we are all discouraged.

There are also, it is said, reasons of a legal order. This view was very clearly put by the British delegate. The majority of the Bases on which we reached agreement were accepted by way of compromise. Concessions were made. That is true. Several countries gave way on certain points for the purpose of facilitating agreement. Some of us are now asking whether the Bases on which this agreement was reached can be accepted in view of the fact that it has not been possible to solve the main problem of the Convention, namely, that of the breadth of the territorial sea.

I realise that we all thought it would be possible to reach a solution which should include all the Bases, and I quite understand the difficulties which have arisen on this account. But we must not lose all hope; we must see whether there are not certain Bases which do not involve total agreement in a Convention which would embrace them all.

The first Bases referred to the nature of the territorial waters; the following ones deal with their breadth and then with their limits. Agreement was not possible in regard to certain of these Bases of Discussion. There is also, however, a chapter entitled "Foreign Ships passing through Territorial Waters". In dealing with that question, we did not assume throughout that a complete Convention must be drawn up. On this point, at least, codification is possible and would be of great value. Why should we not accept this part of the Convention?

What we are engaged upon is progressive codification. That does not mean that it is essential that we should first solve all problems relating to the territorial sea and then pass on to other problems. We must solve a few of these problems first and deal with the others later. We cannot do everything at once. The question of the territorial sea may have to be dealt with at four or five conferences, I do not see that there is any legal reason to prevent us from accepting the suggestion that the retention of certain Bases of Discussion, such as those contained in the chapter "Foreign Ships passing through Territorial Waters", should be examined by a Sub-Committee.

If we can do this, we shall create a link between the present Conference and future conferences which will deal with the other questions. Governments can safely accept this proposal, and we shall thus have laid the foundations of codification on a very important question. Moreover, for the moment, a three-quarters majority is sufficient. It is not necessary to have unanimous agreement on the part of all Governments. Complete unanimity is not possible in codification of any description. Governments will be safeguarded by the provision for reservations, for denunciation, for the suspension of the Convention for five years, etc.

It seems to me that it is absolutely essential to form this link between the present Convention and the future Convention. If we cannot agree on some Bases, if only on ten or even five of them, the work of codification in this matter may be put back for several decades. I am therefore strongly in favour of the proposal to appoint a small Sub-Committee to examine very carefully the possibility of concluding a Convention dealing with a few Bases only.

If we do not do this, the same thing will happen as has occured in another Committee. We shall first of all drop the idea of a Convention and refer only to a draft Convention, and when we have discussed that for an hour or so we shall drop the idea of a draft Convention and shall confine ourselves to a Protocol; after discussing the Protocol, we shall finally say that, as we are not in agreement, we will abandon the Protocol and go home.

In undertaking a four days' journey to The Hague, the Greek delegation hoped that it was going to contribute to the work on behalf of which the League of Nations has already done so much, and it will feel greatly distressed if that work is in vain.

If we do not succeed in effecting even the smallest measure of codification, this complete failure may possibly prejudice international relations. I cannot conceal from myself the fact that this task of codification was not understood in the same sense by all of us. There has been a general tendency to seek to amend slightly the existing law, at all events as regards rules which were not absolutely definite. Perhaps that was inevitable, but it is none the less to be deplored.

M. Gidel (France):

Translation: During the whole of this discussion, which brings us very near to the end of the Conference, I have often thought of Stevenson's words: "It is better to travel hopefully than to arrive". We set out with high hopes, and I think that, even if we had those hopes to-day, the melancholy feeling expressed in Stevenson's words would still be present, because we should regard the results as falling short of our desires.

Unfortunately, we have had to relinquish those high hopes and must frankly admit that we are faced with disappointment — that is the only word I wish to use. Graver words were used this morning, but I will not recall them. I still trust that we shall find some means of turning our work to account, and I desire to associate myself with the previous speakers this morning who one and all paid a tribute to the value of that work.

As the result of our work, we have reached agreement on certain points, although we disagree on others. As regards the points on which we are agreed, namely, the so-called "juridical" clauses, our agreement is complete. I feel sure that, notwithstanding the reservations which have been made in regard to the compromises on which certain provisions were based, a very large majority of the Committee will be able to adopt those texts.

On the other hand, there has been disagreement on certain points. But even where that disagreement is serious, it is still only relative. I should like to remind you that a test vote was taken the other day. Although it was not of a solemn or final nature, it was none the less of considerable value, and showed that on certain points the majority were in agreement. Thus, even in the midst of this disagreement, we have the beginnings of agreement.

How can we make use of the results obtained? Two radical solutions have been proposed, namely, a report or a Convention.

I should like to say at once that I do not like the idea of a report. I think it is a discouraging solution, and we should only have recourse to it in the last resort. It is not enough to pay our respects to the work which we have accomplished and then place the remains in a coffin from which they will never be exhumed. That is what we should be doing if we drew up a report, and that is why this solution seems to me to be a solution of despair, which we should only accept if no other course is open to us.

There remains the solution of a Convention. This Convention can, of course, only be a partial one; we are absolutely agreed on that point. In the first place, it should be understood that all conflicting points of view in regard to outstanding problems should be expressly reserved, for reasons which have been explained by various speakers and which I need not recall.

It is also obvious that a Convention of this kind, dealing with the legal status, would not possess the full value of a Convention; that is to say, it could not be applied until the problems on which we disagree, namely, the breadth and base-line of the territorial sea and the adjacent zone, have been settled. There is, in fact, a very close relation between the essential provisions of Bases Nos. 3, 4 and 5 and the solutions which we have reached in regard to the legal status.

I fully agree with what M. Raestad has said regarding the danger of signing a Convention immediately. The ratifications would be very few, and perhaps there would be none at all. The poor success of our work would thus be obvious.

What, then, are we going to do?

Perhaps we could draw up the text of a Convention, the juridical value and name to be given it being determined later, but which, I would insist, should not in any case come into force until the Convention which we hope to sign one day on the capital points of our work has been brought into operation. A precedent for this procedure already exists in the work of the League.

If we sign a Convention, or more accurately a text of which the name would be determined later, it must be quite clear that its provisions would not be brought into effect until another text dealing with the essential points of the Convention had been signed and had come into force.

That might possibly prevent the failure which we are so anxious to avoid. We all

believe in the value of the work undertaken and desire it to be continued. We must therefore prepare the ground for a continuation of this work, and I think we should accept some such solution as that which M. Raestad has just proposed.

Personally, I merely wished to make a suggestion with a view to allaying the misgivings expressed by the Norwegian delegate. I am not making any exclusive recommendation in favour of any particular solution. The chief thing is the result. We must see that we do not abandon our work and consign it to oblivion, which would be the case if the results of that work were purely and simply embodied in a report. What we have to do is to prepare the way for future action.

Viscount Mushakoji (Japan) :

Translation : I came here to establish the rules of international law, and with the intention of giving up to the experts in international law the place which the diplomatic corps, to which I have the honour to belong, has occupied from time immemorial.

Unfortunately, that place has not been taken by you, and we diplomatists still retain our former powers. We very much regret this. We came here in a conciliatory spirit and are going away greatly disappointed.

I accordingly associate myself with those of my colleagues who have proposed that a Sub-Committee should be appointed to examine the possibility of establishing a Convention, or at all events a preliminary draft. Articles 1 to 13 of the draft report could certainly be retained. I recognise, however, that from Article 14 onwards many difficulties might arise, as those articles refer to questions which are closely connected with the principles laying down the breadth and limits of the territorial sea.

This point could, nevertheless, be entrusted to the Sub-Committee for examination.

M. Erich (Finland) :

Translation : The Finnish delegation deeply regrets the failure of our Committee's work, which was quite unexpected, at all events by some delegations. We are prepared to make the best of things and to help to save appearances as far as possible.

The Finnish delegation is of opinion that it would be useless to attempt to frame a so-called Convention without any basis or foundation. Such a Convention, consisting of a series of provisions of conditional value, could not seriously be submitted to Governments for their ratification. The breadth of the territorial sea, the width of the adjacent zone, if it exists, and questions connected with the formations known as archipelagoes, are not only of essential importance for our task, but are fundamental to the whole matter with which our Committee is dealing.

If in Article 1 of our agreement we say that the territory over which the State has sovereignty consists of a belt of sea specified in the Convention ; if in Article 3 we state that passage is the act of navigating in the territorial sea ; if in Article 5 we stipulate that the coastal State may take any measures necessary to prevent within the territorial sea any interference with its security — without, at the same time, fixing the breadth of the territorial sea and of the adjacent zone — this will appear very strange.

As yet, nothing has been finally settled, because the provisions which we have discussed and adopted are dependent on a fundamental problem — the breadth of the territorial sea, the existence and extent of the adjacent zone, and the question of archipelagoes.

For this reason, I think it is quite impossible to contemplate the establishment of a Convention proper at the present time. The points on which agreement has been reached can equally well be stated in a report. We know exactly what we have adopted and the points on which we are in agreement. It would be quite impossible to invite any State to ratify such a Convention.

Needless to say — and I think we are all agreed on this point — the work of codification must be continued. That is understood ; because, whether we succeed in finally solving any particular problem with which we are dealing or not, it is quite certain that we shall not say that any of the questions examined by the Conference are incapable of codification. That contingency is excluded. We are all agreed that we must continue our work at a later conference.

Vice-Admiral Suric (Netherlands) :

Translation . The Netherlands delegation is the first to regret the negative results of this first attempt at codifying international law on the question assigned to us. On Saturday we endeavoured to submit a compromise solution, but without success. We have, therefore, listened with great interest to the statements and proposals made this morning. My delegation is of opinion that the suggestion put forward by the Belgian delegate, M. Rolin, carried out in accordance with the recommendations made by the delegate for France, should be accepted by the Committee, as it would give a certain satisfaction to all who desire the progressive codification of international law.

Mr. Miller (United States of America) :

I associate myself with all the expressions of regret that have been made regarding the present position of this Committee ; but I would say with all respect that there still seems to me to be some disinclination to look that situation in the face, and to take it as it exists now and not as we might have hoped that it would exist.

It is proposed that we should appoint another Sub-Committee. I would call your attention, however, to one point in regard to which we are certainly all in agreement, namely, that it is now Monday afternoon. It is proposed that a Sub-Committee should examine the question and lay before us a draft for a Convention or some other document on which we might agree. I do not think that that suggestion is at all acceptable.

It has been said that we have codified certain articles, but I do not think that statement is correct. It is true that we have reached general agreement along the lines of certain drafts proposed in Sub-Committee, but we have never examined the texts in detail, and I submit that we shall never now have an opportunity so to examine them. Every word in such a document is of the utmost importance to every Government which signs it. The turn of a phrase may make a good deal of difference ; it must be examined in both languages, and we have not the time to do it.

Furthermore, the proposal to make that draft Convention dependent on what happens in future seems to me also unacceptable. How can we say that a text which relates to every other part of this subject shall be accepted provisionally, dependent upon agreement being reached regarding the other matters ?

I am not going to speak of the extent of territorial waters ; the point is that this proposed undefinitive Convention, if I may call it so — conditional, problematic, I could use some more adjectives properly to describe it — is to depend on something done in the future which we do not know, and the terms of which, if some time in the future we were to agree upon them, would unquestionably change the basis that has been discussed in some detail, even supposing that there was complete accord on the language.

Accordingly, it seems to me that the solution which was proposed by the delegation of the United States is, in fact, the only solution that is possible at this time and at this stage of our proceedings.

M. Giannini (Italy) :

Translation : In the first place, I wish to correct something which was said just now by our British colleague, because I wish to avoid any misunderstanding on the matter. As Dr. Brown reminded us, I said that we should always keep before us the principle that the common interests of all nations require the freedom of navigation, and Dr. Brown added that countries which wished to diminish that freedom must justify their claims. I should like to point out that what I said was that freedom of navigation was not inconsistent with the interests of the State in its coastal zone, and that it was necessary to take account of acquired rights and established situations.

After this explanation, I should like to remind the Committee that we have until Saturday evening to frame a Convention. We have been asked to do our utmost to accomplish this task.

If the Conference asked us to work day and night in order to reach agreement, we should be quite willing to do so, but we have to consider very carefully what we mean by the word " agreement ".

It has been proposed that the problem should be divided. It has been explained that the question with which we are dealing has a juridical aspect and a political aspect. But can they be separate ?

The edifice which we are endeavouring to construct seems to me to be without a foundation. Is it possible to insert in a Convention the rules submitted by the Sub-Committee and to leave fundamental problems on one side ?

I do not altogether agree with Mr. Miller that the difficulties with which we are confronted are due to certain reasons of advisability. I think, on the other hand, that reasons of substance are preventing further progress.

I cannot conceive of a Convention dealing merely with points of detail. We wish to frame a Convention on territorial waters, and territorial waters are only mentioned in Article 1, which provides that States possess sovereignty over those waters. We then proceed to settle special problems which might be dealt with in other Conventions.

We must do all that is possible. I am prepared to sign an agreement on condition that the principal question is not left outstanding.

Certain delegations which are deeply interested in maritime problems appear to think that it is impossible to obtain any results at this session. How, then, can we have any hope of framing a Convention ?

In these circumstances, all we can do is to record the results of our work in a report. If we are unable to formulate satisfactorily the articles proposed by the Sub-Committee we must leave them as they are. That is why, in reply to Mr. Miller's request to us to make an effort, I said that the rules proposed by the Sub-Committee were provisional and represented compromises. We have not confined ourselves purely and simply to laying down the existing rules of law. We have attempted to reconcile our views, and the first results should be embodied in the report.

It is very difficult to determine immediately the lines on which the report should be drawn up. This matter must be left to the Drafting Committee. It is not possible for us to deal with it here or to examine even summarily the rules prepared by the Sub-Committee. We have to recognise that our work stops at this point. It is unfortunate, but it is not our fault.

I wish to protest very strongly against the dangerous statements made by some of my colleagues. I would remind you that, as recently as 1910, great efforts were made and considerable time was spent in Paris with the object of drawing up an Air Navigation Convention. Those efforts were not successful. The British delegation demanded that the question should be postponed. This was done, and, in 1919, after further study, the Paris Convention was finally drawn up, and, as we know, is shortly to become universal.

In 1925, the French Government invited Governments to undertake the codification of private law. Investigations were undertaken, but it was only possible to draw up a draft. In 1929, this draft was converted into a Convention.

These facts should serve to encourage us. We are not going to quench the torch of codification in the territorial waters. We mean to keep it alight and the report will show that we have done so and that we intend to continue the work.

I do not think the despondent attitude of the Committee is justified. We have worked well and can leave the Conference with the satisfaction of knowing that we have done all that was in our power. We have not obtained the desired results owing to the difficulties inherent in these problems.

We must not forget that the true wisdom of politics is moderation. We have no right to overstep its bounds, but must act cautiously. The problem has not been completely settled to-day, but it will be to-morrow. Let us keep our torch alight so that it can be handed on to the next conference.

The Chairman :

Translation : There is an atmosphere of resignation in the Committee. We have to acknowledge to our regret that agreement is not possible on the question of the breadth of territorial waters. Fortunately, we are at the same time able to note a more pleasant fact, namely, that we are in agreement on a very important point.

It is our duty not to do anything which may make agreement on the question more difficult ; on the other hand, we must make every effort to jeopardise the important work of codification.

The Drafting Committee will be entrusted with the preparation of the report on this matter, and I suggest that Mr. Miller, M. Giannini, Viscount Mushakoji and M. Raestad should assist the Committee in that task.

There is one question on which opinions are widely divergent, namely, whether we should or should not draw up a partial Convention embodying the points on which agreement has been reached. Certain speakers are strongly in favour of that solution, whereas others have expressed a contrary view.

An intermediate solution has been suggested by M. Gidel, who proposes that a partial Convention should be established, but should not come into force until another Convention dealing with the main points of our work is brought into operation.

Finally, it has been proposed that a preliminary draft should be drawn up and submitted to Governments, and a definite proposal by M. Raestad has been circulated during the meeting.

In these circumstances, I propose the following compromise : that we should request the Drafting Committee to study the various proposals, make suggestions and see whether it is not possible to draw up a Convention or a preliminary draft Convention on the juridical questions.

As an alternative, the Drafting Committee would be authorised to prepare a draft report, if it found the establishment of a Convention or a preliminary draft impossible.

M. Spiropoulos (Greece) :

Translation : The Greek delegation has heard with great pleasure the Chairman's proposals, which it thinks the Committee should be able to accept in principle. Since, however, we have four proposals arranged in natural gradation, I think it would be better to ascertain, in the first place, whether the Committee is in favour of a partial Convention or not. If this first proposal is rejected, the Drafting Committee's task would be facilitated. I would further ask who the members of this Committee would be.

The Chairman :

Translation : It is our own Drafting Committee. The various proposals would be referred to that Committee.

M. Rolin (Belgium) :

Translation : I would appeal to my Greek colleague not to press his proposal. He knows my views. I should very much have liked a partial Convention, but such a Convention, if it did not include States which have signified their opposition to it, would be of no value in a question such as that of the territorial sea. The effect of the vote would be to compel the delegations to arrange themselves again in opposite groups.

We are all desirous of reaching agreement. We have stated our preferences and appeal to our colleagues to show a conciliatory spirit when we endeavour to give concrete form to the points on which agreement has been reached, so that they may be of utility in future. With these general indications, I think we can trust the Drafting Committee to do useful work.

M. Spiropoulos (Greece) :

Translation : Since what M. Rolin has just said is in accordance with the Committee's wishes, I will not press my proposal.

The Chairman :

Translation : If there are no other objections, I shall consider that the Committee accepts the proposals I have made.

The Chairman's proposals were adopted.

The Committee rose at 1.25 p.m.

SIXTEENTH MEETING

Tuesday, April 8th, 1930, at 10 a.m.

Chairman : M. GÖPPERT.

30. EXAMINATION OF A DRAFT RESOLUTION EMBODYING THE CONCLUSIONS OF THE COMMITTEE'S WORK.

The Chairman :

Translation : The Drafting Committee, with the assistance of Mr. Miller, M. Rolin, M. Giannini and M. Raestad, met yesterday afternoon and prepared the suggested compromise for the conclusion of the work of the Second Committee. It reads as follows :

" The Conference notes that the discussions have revealed, in respect of certain fundamental points, the existence of a wide divergence of views which for the present renders the conclusion of a general Convention on the territorial sea impossible, but considers, on the other hand, that the work of codification on this subject should be continued. It therefore :

" (1) Requests the Council of the League of Nations to communicate to the Governments the articles contained in Annex X and dealing with the legal status of the territorial sea, which have been drawn up with a view to their possible incorporation in a general Convention on the territorial sea ;

" (2) Requests the Council of the League of Nations to invite the various Governments to continue in the light of the discussions of this Conference their study of the question of the breadth of the territorial sea, and questions connected therewith, and to endeavour to discover means of facilitating the work of codification ;

" (3) Requests the Council of the League of Nations to be good enough to consider whether the various maritime States should be asked to transmit to the Secretary-General official information regarding the base-lines adopted by them for the determination of their belts of territorial sea, in order that such information may be filed and kept at the Secretariat ;

" (4) Recommends the Council of the League of Nations to convene as soon as it deems it opportune a new conference, either for the conclusion of a general Convention dealing with all questions connected with the territorial sea or — if that course should seem desirable — of a Convention limited to the points dealt with in the annex."

The Drafting Committee feels sure that it is not possible to propose to you a partial Convention on the legal articles or on only part of those articles. Moreover, it considers it most important not to abandon the work embodied in those articles, as a number of delegations attach great value to it.

As regards more particularly the articles relating to the technical questions, that is to say, the legal regime of the territorial sea, the Drafting Committee specifies in the first paragraph of its draft that :

> " The Conference . . . requests the Council of the League of Nations to communicate to the Governments the articles . . . "

The draft conclusion even adds at the end of the paragraph :

> " . . . the articles contained in Annex X and dealing with the legal status of the territorial sea, which have been drawn up with a view to their possible incorporation in a general Convention on the territorial sea."

Those articles have so far been examined and approved only in Sub-Committee. In order to give them a permanent character, the Committee itself must take a decision on them.

M. Spiropoulos (Greece) :

Translation : The Greek delegation yesterday did its utmost in the hope that we might succeed in drawing up at least a partial Convention. As the majority of the Committee has decided to the contrary, the Greek delegation, yielding to necessity, accepts the proposal which the Chairman has just read.

I must add that, in the course of the discussions, the Greek delegation has often made concessions with a view to facilitating agreement. For example, it declared its readiness to renounce the adjacent sea. It made that concession in favour of freedom of communications. As, however, we have not succeeded in reaching an agreement, and as, moreover, the Greek State possesses an adjacent sea, this State naturally reserves all its rights on this subject.

M. de Magalhães (Portugal) :

Translation : The discussion has raised a very important question, which is of great interest, not only to a number of individual delegations, but also from the international point of view — I refer to the question of

fishing. If the Committee agrees, I will ask the Drafting Committee to insert a few words on that subject in the draft setting forth the conclusions of our work. As I have not the final text before me, I cannot make a definite proposal, but I am quite sure the Drafting Committee will do better than I could myself.

The Chairman :

Translation : We shall have to take up this question when we examine the Icelandic delegation's *vœu*, which appears in Document No. 24. I propose that we discuss this *vœu* when we have concluded the legal articles.

M. de Magalhães (Portugal) :

Translation : The Icelandic proposal relates to scientific researches and the international regulation of fishing. There is another proposal I have made with the object of including, in connection with the so-called adjacent zone, a provision regarding the policing of fishing. The discussion of that proposal was postponed. When it takes place, I intend to make a more definite proposal on behalf, not only of the Portuguese delegation, but of others as well. If the Committee intends to examine the proposal with a view to making a recommendation or a *vœu*, I agree.

M. de Armenteros (Cuba) :

Translation : I second the Portuguese proposal.

M. Meitani (Roumania) :

Translation : The Roumanian delegation accepts the proposed compromise. It also desires to congratulate and to pay a tribute to the Sub-Committee and the Drafting Committee, which have accomplished such a difficult task. I hope that this work will not prove useless, although some speakers yesterday seemed to be pessimistic. All the articles are clearly and precisely worded, as far, of course, as was possible, in view of the diversity of questions considered. I was anxious to pay this tribute to the Sub-Committee and its Rapporteur. The report deals with all the questions examined by the Committee and meets all the objections which it was not possible to mention in connection with the individual articles.

I cannot, however, agree with the Sub-Committee's method of drafting certain articles, and particularly Article 12, which relates to the passage of warships through the territorial waters of a State, even if, in the event of abuse, that State could not present its observations through the diplomatic channel. That, however, is a question we have not to consider at the moment, since we are dealing with a mere preliminary draft, which will be submitted for consideration by the Governments. I was not alone in taking this view. I think the French delegation shared it, and M. de Bustamante set forth an identical provision in Article 27 of his draft.

In conclusion, I should like to say that I am not so pessimistic as some of our colleagues. As M. Giannini rightly said, we must not lose courage because we have not succeeded in drawing up a Convention. Several cases have already occurred in which a Convention could not be prepared until the second or third conference. I hope we ourselves shall not need a third conference, and that we shall succeed in reaching an agreement in the next. The negotiations to be conducted between the various Governments, and time itself, will work in our favour. Gradually, the differences which have arisen will disappear, and since we have met in the hospitable country of William the Silent, let us not forget his saying that : " Hope is not necessary for enterprise, nor success for perseverance. "

M. Giannini (Italy) :

Translation : There is, in this Committee, a certain quite unjustifiable atmosphere of gloom. We have to consider the draft form given to our compromise, the text which the Rapporteur will use in preparing his report and the *vœux*. I beg the Committee to begin its practical work, which will be lengthy and which will claim all our attention.

M. Cohn (Denmark) :

Translation : The Danish delegation has reservations to make on Articles 11, 14, 17 and 18. I expect it will be in a position to submit its observations later.

The Chairman :

Translation : I propose that we now proceed to read the articles of the draft report and the observations of our Rapporteur.

This proposal was adopted.

31. EXAMINATION OF THE DRAFT REPORT OF THE COMMITTEE : TEXTS PREPARED BY THE FIRST AND SECOND SUB-COMMITTEES (ANNEXES III AND IV).

The Chairman :

Translation : I ask the Committee to consider the report article by article. (Annex III.)

Article 1.

Article 1 and the observations thereon were read.

M. Raestad (Norway) :

Translation : I propose the following amendment : In the fourth line of the observations substitute for the words " in principle " the words " in its nature ".

This amendment was adopted.

M. Giannini (Italy) :

Translation : Is the second paragraph of the first article absolutely necessary ?

M. François (Netherlands), Rapporteur :

Translation : Several delegations thought it most important to indicate that there are certain limits to sovereignty. This paragraph, therefore, seems to me necessary.

M. Spiropoulos (Greece) :

Translation : I agree with M. Giannini that, from the legal point of view, this paragraph is not necessary. During the discussion, however, certain delegations felt some difficulty in accepting the word "sovereignty". M. Rolin proposed that some other term should be used instead, but it was realised that there was no better term and it was therefore kept, this paragraph being added in order to moderate somewhat the rigidity of the term "sovereignty". As this is a preliminary Convention, I hardly think M. Giannini will press for the omission of this paragraph, as it is the outcome of a compromise.

M. Giannini (Italy) :

Translation : The principle of sovereignty necessarily connotes that of relativity. Sovereignty is exercised in a different manner on land, on the sea, in the air and on the subsoil. In view of this relative nature of sovereignty it is, in my opinion, needless to insert here a paragraph the *raison d'être* of which is not clear.

M. Spiropoulos (Greece) :

Translation : I beg the Committee not to enter into a long discussion on this question, in view of the reasons for which the paragraph was inserted. It would be better to take a vote.

M. Giannini (Italy) :

Translation : We must avoid inserting useless provisions into Conventions.

I ask for the omission of the second paragraph of Article 1.

The Chairman :

Translation : In accordance with M. Giannini's wish, I put to the vote the omission of the second paragraph of Article 1.

The Italian delegation's proposal was rejected by 20 votes to 6.

Article 1 was adopted.

Article 2.

Article 2 and the observations thereon were read.

M. Giannini (Italy) :

Translation : I cannot understand why, after having included the second paragraph of Article 1, you insert an identical rule in Article 2. I cannot see the use of this rule in Article 1, but as you have decided to retain it, I should like it at all events to be dropped in Article 2.

M. François (Netherlands), Rapporteur :

Translation : This paragraph was retained in order to make it clear that the Convention on Aerial Navigation remains as it is and is not affected in any way.

M. Giannini (Italy) :

Translation : I quite understand that observation in the case of Article 2, but I cannot understand it in Article 1. Since you have retained it in Article 1, it covers the whole Convention.

Abd el Hamid Badaoui Pasha (Egypt) :

Translation : The second paragraph in Article 2 is justified by the fact that Article 2 relates to the breadth of the territory with reference to the air space, whereas Article 1 refers to the zone of sea. Consequently, the same principles must be repeated for the two different cases.

On the other hand, I cannot understand the contrast between general and conventional rules. What is meant by general rules as opposed to conventional rules?

M. Spiropoulos (Greece) :

Translation : I agree with Badaoui Pasha. Article 1 refers to the zone of sea, whereas Article 2 refers to the air space.

On the other hand, I agree with the words "general or conventional rules"; everyone knows that there is a difference between those two terms. There may be special rules limiting the exercise of sovereignty over the subsoil and over the air space.

I think, however, we ought not to delay long over this question. We have already come to an agreement and I ask for it to be put to the vote.

M. Cohn (Denmark) :

Translation : We might perhaps say : "The rules contained in the Convention or the rules of international law".

The Chairman :

Translation : We must first vote on the question whether we are to keep this paragraph or not.

M. Raestad (Norway) :

Translation : I am in principle opposed to the article as a whole, because there is no legal differentiation between the territorial sea, the air and the soil. I will not repeat my arguments, nor will I ask for a vote, but I should like to draw the Committee's attention to the following observation in the report :

> "As regards the territorial sea, these limitations are established, in the first place . . ."

In order to avoid an inconsistency it would be better to say :

> "As regards the territorial sea, including the use of the air and the bed of the sea for purposes of navigation . . ."

M. Giannini (Italy) :

Translation : Since it has been decided to keep this paragraph, I propose the following formula :

" Nothing in the present Convention prejudices any Conventions or rules of international law relating to the exercise of sovereignty in these domains."

If the Committee prefers the word " principles " I will accept it.

M. Cohn (Denmark) :

Translation : There is no need to speak of rules ; Conventions themselves are rules too.

M. Raestad (Norway) :

Translation : We could say : " Conventions or other rules of international law ".

Mr. Miller (United States of America) :

I would point out that a Convention might be concluded between two States only. Would it be contended that that was another rule of international law ?

M. de Ruelle (Belgium) :

Translation : We shall shortly have to examine a general provision on the connection between previous and subsequent treaties and this Convention. We shall have, in particular, to decide whether an earlier Convention contrary to the present one is to remain valid. This question might seem unimportant in many respects, but in regard to navigation we must not forget the diversity of interests connected with shipping.

M. Spiropoulos (Greece) :

Translation : I propose that we do not settle this question now, but defer it until later.

M. de Ruelle (Belgium) :

Translation : I agree ; we will take it up again when we examine the general clauses.

M. Spiropoulos (Greece) :

Translation : In any case, I propose that we accept M. Raestad's amendment, which is seconded by M. Giannini, and which seems to me quite logical. We must take first the special Conventions and then general custom.

The Chairman :

Translation : The Committee is quite willing to postpone the question raised by M. de Ruelle.

We have to take a decision on M. Giannini's amendment, seconded by several delegates, to revise the second paragraph of Article 2, as follows :

" Nothing in the present Convention prejudices any Conventions or other rules of international law relating to the exercise of sovereignty in these domains."

The amendment was adopted.

The Chairman :

Translation : M. Raestad has proposed the addition of the words : " . . . including the use of . . . " in the paragraph of the observations relating to the territorial sea.

M. Raestad (Norway) :

Translation : The Drafting Committee will find a suitable formula, but the purport of the addition I propose is this : " . . . the use of the air and the bed of the sea for purposes of navigation ".

Abd el Hamid Badaoui Pasha (Egypt) :

Translation : You claim that all this should be regulated by the present Convention ; yet it is understood that the Convention will not settle the question of the air any more than that of the sea-bed.

M. François (Netherlands), Rapporteur :

Translation : The bed is included here for the purpose of anchorage, and the air for breathing.

M. de Armenteros (Cuba) :

Translation : The Norwegian delegate's request might be rendered complete by the use of a term such as " maritime navigation ".

The Chairman :

Translation : We agree.

Mr. Miller (United States of America) :

I should like to make one observation to the Rapporteur in connection with the last sentence of the observations on Article 2. The French text reads : " *Les stipulations du droit international font jusqu'à présent presque totalement défaut* ", which I think is a little too strong. It is true there is not a great body of law on the subject, but I think we might indicate it in a less strong manner.

M. François (Netherlands), Rapporteur :

Translation : The expression is certainly rather strong, and I think a less categorical wording might be adopted.

Agreed.

Article 3.

Article 3 and the observations thereon were read.

M. François (Netherlands), Rapporteur :

Translation : The British delegation proposes a slight amendment which in part affects the substance of the observations. It suggests that the following passage :

" . . . quite independently of the fact that the vessel may have entered the territorial sea with a preconceived intention of doing such act, or even if the intention did not exist at the time of entry . . . "

should be replaced by the following :

" It is immaterial whether or not the intention to do such an act existed at the time when the vessel entered the territorial sea, provided that the act is, in fact, committed in that sea . . . in that event the coastal State resumes its liberty of action. "

I quite agree that we should substitute the British delegate's text for that of the Drafting Committee. I only wonder whether the sentence : " The expression 'fiscal interests' should be given a wide interpretation . . . " might not usefully be struck out.

At the time of the discussion we agreed that the expression " fiscal interests " might be misunderstood as invariably referring to the interests of the Treasury. There are, however, rules relating to importation, exportation and transit. Thus, on grounds of public health, a coastal State may find it desirable to prohibit importation, exportation or transit in its territory. It is a matter that affects its interests, and it should be expressly stated in the report that this question is covered by the term " fiscal interests ".

M. Raestad (Norway) :

Translation : I venture to make a small observation on the term " fiscal interests ". I think the Rapporteur has made a slight mistake. The discussion in the Sub-Committee showed that prohibitions based on grounds of public health cannot be covered by the term " fiscal interests ". I think health questions must come under the heading " *ordre public* " (public policy). We must, I think, retain the text as it stands and simply substitute the words " public policy " for the words " fiscal interests ".

The Chairman :

Translation : I think we might adopt the amendment proposed by the Norwegian delegation to the effect that import, export and transit prohibitions enacted by the coastal State are covered by the term " public policy ".

The proposal was adopted.

M. Erich (Finland) :

Translation : It seems to me rather illogical to state in the third paragraph of Article 3 what is comprised in the right of passage, before we decide whether that right exists. The provision relating to the exercise of the right of innocent passage does not occur until Article 4. In my opinion, we might perhaps combine Articles 3 and 4. We should keep the first paragraph of Article 3 ; the second paragraph would comprise the provision which at present forms the first paragraph of Article 4, namely : " A coastal State may not hinder the innocent passage of foreign vessels in the territorial sea " ; the third paragraph would define the right of passage, namely : " The right of passage includes the right to stop " and so on to " by distress ".

Then would come the second paragraph of Article 4 : " Submarine vessels shall navigate on the surface ", and lastly, the nature of passage which is not innocent would follow, either in Article 3 itself or in a special article.

M. François (Netherlands), Rapporteur :

Translation : I am not sure whether M. Erich's suggestion ought to be adopted, since this is not a formal Convention, but merely a series of Bases of Discussion. If the Committee so desires, however, I will accept M. Erich's suggestion to modify the text in the way he has indicated.

Dr. Schücking (Germany) :

Translation : I made an observation similar to M. Erich's before the Sub-Committee. In my opinion, it is absolutely necessary to make this alteration in the text.

M. Spiropoulos (Greece) :

Translation : I second M. Erich's proposal.

Admiral Keyserling (Latvia) :

Translation : I also support the Finnish delegation's proposal.

I should also like to know whether the words " public policy " and " fiscal interests ", which appear in the second paragraph of Article 3, cover the " rights of fishing, shooting, and analogous rights belonging to the coastal State " laid down in Article 6 *(d)*. Ought we not to say in Article 3 : " Fiscal and economic interests "?

M. Giannini (Italy) :

Translation : May I remind the Committee that our time is very limited, and that since we are dealing with the draft of a preliminary draft, it would be better for us not to go so much into detail? Would it not be enough if we placed Article 4 in front of Article 3?

M. François (Netherlands), Rapporteur :

Translation : I can see one small objection. Article 3 is of a general nature ; it applies both to warships and to merchant ships. Article 4 and the following articles apply to vessels other than warships. The title should precede the words " Article 4 ".

The Chairman :

Translation : I propose that the text be left as it stands.

M. Gidel (France) :

Translation : M. Erich's observation seems to me absolutely logical. We might perhaps meet our colleague's objection without changing the order of the articles, but by substituting in the third paragraph of Article 3 the word " passage " for " right of passage ".

M. Giannini (Italy) :

Translation : When we begin to change a text, we run the risk of making it worse. I do not think the wording " passage includes the right to stop or to anchor . . . " is satisfactory. Do we want to say whether it is a right or not ? If so, we cannot omit the word " right ".

M. Erich (Finland) :

Translation : As we have very little time, and although I should have preferred a more extensive change, I can accept M. Gidel's proposal.

The Chairman :

Translation : Does M. Giannini accept it too ?

M. Giannini (Italy) :

Translation : I will accept anything so long as we finish.

I should like, however, to make a general statement. I do not want to examine this draft in every detail because if I did I should have to submit observations on every paragraph. For example, do you not think it strange to say : " passage is the right to navigate . . . " and : " passage is not innocent when . . . " in order to define innocent passage ? We then say what the right of passage covers. The whole construction of the article ought to be revised. I accept it as it stands, because there is no time to criticise it.

The Chairman :

Translation : Can I regard this paragraph as adopted ?

M. de Magalhães (Portugal) :

Translation : I second the Latvian delegate's proposal.

I also propose the following amendment : the third paragraph of Article 3 reads : " . . . is incidental to ordinary navigation ". The term " incidental " is too vague, and I ask that it should be replaced by " necessary ".

Admiral Keyserling (Latvia) :

Translation : I venture to point out to M. de Magalhães that I did not make any definite proposal. I simply asked a question, namely, whether we should or should not add the word " economic ".

M. Raestad (Norway) :

Translation : This question was discussed at great length by the Sub-Committee. It really involves two different problems. Here we are concerned with the — so to speak — permanent definition of the right of passage, but even if the passage is innocent, the coastal State can regulate it to a certain extent. Both points must be retained.

I would urge the Committee not to alter this definition or the order of the clauses, as it is the outcome of an exhaustive examination of the problem.

M. Spiropoulos (Greece) :

Translation : I agree with M. Giannini that we ought not to spend too much time on each article. We are not making a general criticism ; that will be for a future conference to do. We have simply to lay down certain principles.

The Chairman :

Translation : If there are no other observations, I shall regard the article as adopted with the reservations which have been made.

This was agreed.

Article 4.

Article 4 and the observations thereon were read.

M. François (Netherlands), Rapporteur :

Translation : We have before us an amendment by the British delegation, which proposes to substitute in the observations, for the words " but all other vessels, etc. ", the following : " but also vessels such as yachts, cable ships, etc., if they are not vessels belonging to the naval forces of a State ". The main object of this amendment is to replace the lists of a State's warships by " vessels belonging to the naval forces of a State ".

M. Cohn (Denmark) :

Translation : I propose that we omit the last words of the observations : " at the time of passage ", as they seem to me superfluous.

M. Giannini (Italy) :

Translation : Can we not use the term " *marine militaire* " ?

M. François (Netherlands), Rapporteur :

Translation : That term has no equivalent in English.

M. Gidel (France) :

Translation : The term " at the time of passage " seems to me preferable.

M. de Magalhães (Portugal) :

Translation : I do not understand the object of this discussion. We cannot go back upon questions of principle. When we make an observation on a question of form we are told that it is not worth the trouble because we are only examining a preliminary draft. I really do not know whether I can submit any new observations either on questions of substance or of form.

M. Giannini (Italy) :

Translation : The report before us contains about twenty articles and some general clauses. We cannot possibly examine them fully. On the other hand, if we say that this draft comes from the Committee, we are placing upon the Committee a responsibility it cannot assume.

I fully understand the Portuguese delegate's remarks, and he is quite right. If the draft is regarded as a preliminary draft of the Sub-Committee's, we may leave it as it stands. If, however, it is submitted as our Committee's draft we must study it thoroughly; but then I do not see how we can possibly finish our work by the plenary meeting on Friday.

M. Spiropoulos (Greece):

Translation: The fears I expressed at Monday's meeting seem to me well-founded. I foresaw the danger that the Committee might do nothing at all if it did not ultimately decide to submit a partial Convention. That is what has happened, since we are now considering accepting a draft produced by a Sub-Committee. I do not object; I consider that what M. Giannini has said is very true. Since we cannot prepare a draft Convention and must simply rest content with the report, why waste our time in mere stylistic amendments? The document before us is ample enough. We need only read it rapidly and decide on the matters of principle, but not on questions of detail.

M. Meitani (Roumania):

Translation: I propose that we put M. Giannini's suggestion to the vote.

M. Raestad (Norway):

Translation: If M. Giannini's proposal is adopted, the Sub-Committee will have to hold another meeting. We must confine ourselves to general observations of definite importance and must not enter into subsidiary questions of drafting.

The Chairman:

Translation: I agree with M. Raestad. I think the Committee might meet M. de Magalhães and M. Giannini by giving its decision on the provisions of the draft which is submitted to us as the basis of discussion for a future conference. We have not to change the form of this report, but to give our decision on its principles and confine ourselves to observations and reservations on fundamental questions.

M. Giannini (Italy):

Translation: I cannot accept that suggestion. In that case, the Committee must say that it approves the draft and must shoulder a responsibility which it really cannot assume. I repeat that if the draft is submitted as coming from the Committee, the Committee must study it thoroughly, even if it works day and night. In my opinion, we must simply regard this text as a preliminary draft of a Sub-Committee.

M. Spiropoulos (Greece):

Translation: Three proposals have been made: the first to leave the report as it stands; the second to discuss it fully, crossing the t's and dotting the i's; and the third to read the articles through and simply give a decision on the principles involved. I think the proposal to which M. Giannini will agree is the last.

M. Cohn (Denmark):

Translation: We might perhaps find some way of meeting M. Giannini's objections.

M. Giannini (Italy):

Translation: I have no objections. I have said that I am prepared to regard this document as a mere draft annexed to the report.

M. Cohn (Denmark):

Translation: We might perhaps say in the Preamble that the report is only a Sub-Committee's report, which was read once by the Committee, and that the Committee does not assume responsibility for it.

Abd el Hamid Badaoui Pasha (Egypt):

Translation: The observations which gave rise to this last discussion related mainly to matters of form. So far, there has really been no discussion of the principles embodied in the different articles.

It would therefore seem that the Committee might examine those principles subject to drafting reservations, that is to say, it would not assume responsibility for the wording but only for the principles.

M. de Ruelle (Belgium):

Translation: Our Chairman has made a very sound suggestion, and I venture to repeat it and to press for its acceptance.

We instructed a Sub-Committee to do certain work, and we rightly think that that work has been admirably done. We may legitimately read it rapidly through, however, in order to see whether anything has been omitted and whether it conflicts at all seriously with the opinions expressed here. That is really what we are doing now.

I therefore ask you to accept our Chairman's proposal.

The Chairman:

Translation: I put to the vote the question whether we should continue reading the report.

M. Giannini (Italy):

Translation: How? Without voting?

The Chairman:

Translation: Without voting.

M. de Ruelle (Belgium):

Translation: It is understood that our votes will in no way prejudge our views in regard to the work of a future conference.

M. Giannini (Italy):

Translation: I quite agree with M. de Ruelle. I must point out, however, that so far the voting on each article has been twenty-two votes to six. Such a vote, therefore, is quite useless. If we agree to continue reading the report, stopping whenever an important point is raised, I agree; but it must be without voting.

M. de Magalhães (Portugal) :

Translation : May I perhaps suggest a compromise? We have before us a Sub-Committee's draft. This draft cannot be discussed by the Committee and therefore we cannot vote on it. Accordingly, I propose that we read the report and give delegates the opportunity of making such observations as they may think desirable.

This proposal was adopted.

Articles 5 and 6.

Articles 5 and 6 and the observations thereon were read.

M. Raestad (Norway) :

Translation : I think we should add before " sea " in Article 6 *(c)* the word " territorial ".

M. de Magalhães (Portugal) :

Translation : Article 6 relates to laws and regulations issued by the coastal State in accordance with international custom. Then follows a list of such laws and regulations. Certain paragraphs relate to matters which are not merely subject to regulations but over which the coastal State has more extensive rights.

Further, in the last paragraph a distinction is drawn. It comprises not only regulations in the strict sense of the term, but also rights of fishing, shooting, etc., belonging to the coastal State. The restriction laid down in the last paragraph can only, I think, apply to the regulations.

M. François (Netherlands), Rapporteur :

Translation : We might give an explanation in the observations.

Agreed.

Article 7.

Article 7 and the observations thereon were read.

M. François (Netherlands), Rapporteur :

Translation : It would be desirable to add the word " etc. " in the first paragraph of the observations on this article, after the words " lighthouse or buoyage dues " and also after the words " pilotage or towage dues ".

Mr. Miller (United States of America) :

I wish to call attention to the fact that here, as elsewhere, there are several divergencies between the English and the French texts, and I assume that they will be examined later on. I do not wish to call attention to them in detail, but merely to note that the English does not in all cases correspond with the French.

The Chairman :

Translation : The Drafting Committee will have to bring the two texts into accord.

Article 8.

Article 8 and the observations thereon were read.

M. Giannini (Italy) :

Translation : In the observations it is said :

" It would be quite unjustifiable to interrupt the voyage of a large liner putting out to sea in order to arrest a person alleged to have committed some minor offence on land."

Strictly speaking, such a measure would be justifiable, but we recognise that the loss resulting from the interruption of the vessel's voyage is so much more important than the particular interest of justice in question that such a sacrifice could not be made. To say that " it would be quite unjustifiable to interrupt the voyage " is really saying too little. Moreover, during the discussion we were fully agreed on that point.

M. François (Netherlands), Rapporteur :

Translation : I agree, and the text will be altered by the Drafting Committee.

M. Spiropoulos (Greece) :

Translation : The end of the first paragraph of the observations to Article 8 reads as follows :

" Nevertheless, in practice, the opinion of the competent authority will almost always have to be regarded as decisive."

This sentence seems to me quite useless, and I propose that it be omitted.

This proposal was adopted.

Article 9.

Article 9 and the observations thereon were read.

M. François (Netherlands), Rapporteur :

Translation : We must omit, from the middle of the second sentence of Article 9, the words " in accordance with its laws ".

M. Spiropoulos (Greece) :

Translation : May I make a small observation on Article 9. The end of the first paragraph reads as follows :

" . . . save only in respect of obligations or liabilities incurred by the vessel itself in the course of, or for the purpose of, its voyage through the waters of the coastal State."

Do not these words " in the course of, or for the purpose of, its voyage " change the meaning of the article? At the end of the observations we say :

" . . . execution or arrest can only take place as a result of facts occurring in the waters of the coastal State — collisions, for instance."

Is there not an inconsistency between this explanation and the end of Article 9?

M. Gidel (France):

Translation: The Rapporteur will remember that the question was discussed at great length by the Sub-Committee and that we unanimously agreed that there was no such inconsistency, as M. Spiropoulos seems to fear.

M. Salvioli (Italy):

Translation: There seems to be a small inconsistency between the article and the report.

M. Gidel (France):

Translation: There is no inconsistency in the provisions of the article. We might, if you like, make a slight change in the report.

M. Spiropoulos (Greece):

Translation: I do not quite follow the article which has just been read, but I think there is a small inconsistency between the article and the report. In any case, instead of " . . . as a result of facts occurring . . . " we might say something on these lines: " . . . as a result of facts occurring, not only during, but with a view to the voyage ".

M. François (Netherlands), Rapporteur:

Translation: The Drafting Committee will revise all that.

Article 10.

Article 10 and the observations thereon were read.

M. Raestad (Norway):

Translation: I propose that the words " for commercial purposes " in the observations be changed to " for purposes of economic exploitation ".

M. Giannini (Italy):

Translation: I propose that we add in the third sentence of the observations, after the word " principles ", the words " and definitions ". The text would then read: " in the light of the principles and definitions embodied in that Convention . . . " (that is to say, the Brussels Convention). That would meet M. Raestad's objections.

The Chairman:

Translation: Does M. Raestad accept this proposal?

M. Raestad (Norway):

Translation: Yes. So long as my objection is met, the actual method employed is immaterial to me.

The proposal was adopted.

M. Gidel (France):

Translation: I quite agree with M. Giannini, who I think has made a very useful rectification.

As regards the word " economic ", I feel some doubt as to the desirability of using it, because vessels may be employed for economic purposes which are not commercial — for example, a vessel carrying out surveys and investigations in regard to fishing. The objects in question are certainly economic, since the results must promote the development of an industry which is of the utmost importance to national prosperity. Nevertheless, it is not a commercial purpose, and for that reason I hesitate to accept the word " economic " which M. Raestad proposes.

The Chairman:

Translation: Does M. Raestad press his proposal?

M. Raestad (Norway):

Translation: If it is clearly understood that the word " commercial " relates not only to trade in the strict sense of the term but also to fishing and shooting, I accept it.

The Chairman:

Translation: That is agreed then.

Admiral Keyserling (Latvia):

Translation: There is another aspect of this question. If a vessel belonging to a State is instructed by that State to carry goods belonging to it to one of its ports, or from one foreign port to another, is that a commercial operation or not?

M. Gidel (France):

Translation: That question is settled, I think, by the Brussels Convention. In the case of a cargo of that nature, where there is any doubt as to the official and commercial character of the cargo, it was decided to refer to the declaration of the diplomatic agent of the State concerned. That, I think, is the settlement which appears in the Convention of April 1926.

Article 11.

Article 11 and the observations thereon were read.

M. Lorck (Denmark):

A question of principle is involved in this article. The pursuit does not begin at the moment of hoisting the stop signal but at the moment when the pursuing ship, by bearings or other means, has made sure that a foreign vessel is in the territorial sea. If the stop signal were made at the beginning of the pursuit it might always be said that the ship was outside the limit before it could distinguish the signal. Having been myself in command of Fishery Service vessels, I am fully aware of this fact. I therefore propose that the second paragraph of the article should be amended as follows:

> " The pursuit shall only be deemed to have begun when the pursuing vessel itself, by bearings, measurements of angles or the

like, has made sure that the foreign vessel is within the limits of the territorial sea and the pursuing vessel then starts the pursuit, hoisting the stop signal."

There is also a question involved in the last paragraph of the observations, in which it is said that the arrest of a foreign vessel on the high sea is an occurrence of an exceptional nature. In principle, that is true, but in fact it is an everyday occurrence and it would be too much to notify this fact through the diplomatic channel every time it occurred. I would therefore propose inserting in the last paragraph of the article the words " diplomatic or consular representatives ". The text would then read :

" A capture on the high sea shall be notified without delay to the diplomatic or consular representatives of the State whose flag the captured vessel flies."

Mr. Miller (United States of America) :

The amendments proposed by the Danish delegate are of very great importance and I heartily support each of them. They are very practical and, in my view, the present language of these two paragraphs is entirely too restrained from the point of view of their practical application. I suggest that, subject to any question of drafting, the amendments be adopted.

The first paragraph says " the pursuit of a foreign vessel for an infringement of the law and regulations of a coastal State begun when the foreign vessel is within the inland waters or territorial sea . . . ". It is quite common for the principal vessel to be outside the territorial waters ; the fishing vessel may be outside those waters and its small boats may be inside. It is well recognised that in that case the principal vessel is also an offending vessel ; it is not necessary that the entire equipment, including the principal vessel, as well as the fishing boats, should be inside the waters of the coastal State. That principle has been recognised in several decisions and I think it should be noted in the report. The presence of the vessel within the territorial waters means the constructive presence when there is the physical presence of the small boats. I propose that we might add to the article the words " foreign vessel or its small boats ".

Mr. Green (Irish Free State) :

I support very strongly the remarks of the Danish and United States delegates, which refer to a question which is of great importance from the point of view of fishery inspection.

The Chairman :

Translation : Does the Committee agree with the view that has been expressed, and may we ask our Rapporteur to change Articles 2 and 3 in accordance with the Danish amendment ?

M. Rolin (Belgium) :

Translation : I suggest that we leave it to the discretion of the Rapporteur to draft the text with the assistance of the author of the amendment and perhaps one or two members of the Committee, such as M. Giannini.

M. Gidel (France) :

Translation : I should like to recommend that we take due notc of the very sound observations made by the United States delegation.

M. Spiropoulos (Greece) :

Translation : I at first felt somewhat doubtful whether the idea proposed by the United States delegate should be embodied in the article itself or in the observations, but I agree that it should appear in the article.

M. Raestad (Norway) :

Translation : I should like the Danish amendment to be retained in the form submitted, as that wording was a very good one.

The Chairman :

Translation : Perhaps M. Raestad will also help to draft the final text.

M. Giannini (Italy) :

Translation : I should like to have the text read to us again. We might perhaps reach an agreement now.

(The proposal was read).

M. Giannini (Italy) :

Translation : Since this is only a preliminary draft I accept the text proposed.

M. Gidel (France) :

Translation : Article 11 contained the following sentence : " The order to stop shall be given at a distance which enables it to be seen or heard by the other vessel ". I think this clausc should be retained. Does thc Danish delegate object to the addition of this sentence to the text proposed ? It affords a guarantee against over-hasty pursuit.

M. Giannini (Italy) :

Translation : I second that suggestion.

M. Lorck (Denmark) :

I do not think it would do any harm, and it would make the text more precise.

The proposal was adopted.

The amended text of Article 11, completed by the addition of the above sentence, was adopted.

The Chairman :

Translation : Scveral objections have been raised to the observations on Article 11. I will ask the Committee to take a decision on the question.

M. Salvioli (Italy) :

Translation : I think that the term " immediately " used in the first sentence of the third paragraph is too strong, and I ask for it to be omitted.

This was agreed.

M. Erich (Finland) :

Translation : I should like to read you a slightly modified text of Article 11, taking into account the changes that might have to be made if the existence of an adjacent zone were recognised. It reads as follows :

" The pursuit of a foreign vessel by the coastal State for an infringement of its laws and regulations, begun either in the inland waters or territorial sea of that State, or in the adjacent waters referred to in Article... may be continued on the high sea, provided that the pursuit has not been interrupted. The right of pursuit ceases as soon as the vessel which is pursued enters the territorial sea of its own country or of a third State.

" The pursuit shall only be deemed to have begun when the pursuing vessel has ordered the vessel which is pursued to stop before the latter has left the limits of the territorial sea or adjacent waters. The order to stop shall be given at a distance which enables it to be seen or heard by the other vessel.

" A capture on the high sea shall be notified without delay to the State whose flag the captured vessel flies. "

This proposal does not take the Danish delegation's amendment into account, as the text was drafted before that amendment was submitted.

I should like to say a few words in explanation of this text. We have left the question of adjacent waters open, but if that principle is laid down in the future, the question may arise whether the right of pursuit ought to be allowed if the pursuit was begun in the adjacent zone. The Institut de droit international, in the draft Convention adopted in 1918, really answered that question in the affirmative, in the sense that the adjacent zone having been accepted it would then be stated that the pursuit could begin in that zone too.

The Finnish delegation submits this text in order that the problem may not be neglected in the future and that, if possible, the principle of the continuation of pursuit begun in the adjacent waters should be adopted.

M. Gidel (France) :

Translation : The French delegation asks that it should be mentioned in the records that it associates itself with the idea underlying M. Erich's observations.

Dr. Brown (Great Britain) :

The British delegation strongly dissents from the proposal of the delegate for Finland. We cannot admit that, in any case, there should be a right of hot pursuit commenced outside the territorial sea.

Admiral Keyserling (Latvia) :

Translation : The Latvian delegation fully shares M. Erich's view.

Mr. Pearson (Canada) :

I should like to associate myself with the remarks of the delegate for Great Britain. We believe it is now an established rule of international law that hot pursuit must begin within the territorial or inland waters only. If, however, an adjacent jurisdictional zone is established by treaty, hot pursuit can begin within that adjacent zone only when definite provision is made to that effect in the treaty, as I believe is the case in the Helsingfors Treaty. Unless there is such specific provision, the general rule that hot pursuit cannot begin except within territorial waters remains unaffected.

Article 12.

Article 12 and the observations thereon were read.

M. Meitani (Roumania) :

Translation : I should like to draw the Committee's attention to the observations I made at the time of the discussion of Article 12, and to state that I fully maintain them on behalf of my Government.

Dr. Schücking (Germany) :

Translation : I do not want to revive the discussion which has already taken place on this subject, but I must make one observation. It is surely necessary to introduce at this point in the report a reservation regarding the right of warships to pass through straits, even if the straits are territorial waters. In my opinion, such a right exists, but I should like the question to be explicitly reserved.

M. Cohn (Denmark) :

Translation : I assume that the words " as a general rule " refer not only to the beginning of the first paragraph but to the end of that paragraph. Special cases may arise where previous notification is required for reasons of safety.

M. François (Netherlands), Rapporteur :

Translation : In order to satisfy Dr. Schücking, we might include the following sentence :

" The present Convention shall not involve any departure from international custom or practice allowing the free passage of warships through straits. "

M. Giannini (Italy) :

Translation : It is unnecessary. The present text says : " As a general rule ".

Dr. Schücking (Germany) :

Translation : The question of a strait, however, is quite a special one. If the coastal State allows warships to enter a strait, and has power to forbid warships to pass through

straits, those warships cannot return to their own country.

M. Giannini (Italy) :

Translation : Here again there is a general rule. We can, however, include the point in the report.

M. Spiropoulos (Greece) :

Translation : I think we ought to be quite clear on this point. If the coastal State retains the right to prohibit the return of warships, the rule laid down here is a special one and, in that case, takes precedence.

According to the rule, the State can prevent the return of warships. We must know whether we want States to possess that right ; if we do not, we must expressly state the fact in the article itself, since it is a question relating to a special rule of international law.

M. Gidel (France) :

Translation : In the draft report prepared by the Second Sub-Committee (Annex IV), Article 19 reads as follows :

" Passage may not be hindered on any pretext even in the case of warships in straits between two parts of the high sea used for international navigation. "

Dr. Schücking's objection is surely met by this text, and I therefore think there is no need to include the point in the article we are now examining.

M. Giannini (Italy) :

Translation : I should like it mentioned in the records that I consider Article 12 as a general rule covering the whole Convention.

The Chairman :

Translation : The position of straits is a special one. The rule laid down in the article referred to by M. Gidel would not have the same force as the article now under discussion. The question necessarily arises, therefore, whether it ought not to be mentioned in our document. Dr. Schücking would be satisfied with a reference in the records.

The Chairman :

Translation : I take it that the Committee agrees to insert in the observations on Article 12 the sense of the text of Article 19.

This proposal was adopted.

Article 13.

Article 13 and the observations thereon were read, and *adopted without comment.*

M. Gidel (France) :

Translation : I feel sure I am voicing the views of all my colleagues in expressing to our Rapporteur our sincere congratulations on his clear, accurate and exhaustive report.

The Chairman :

Translation : I think perhaps we should add to Point I of the suggested compromise for the conclusion of the work of the Second Committee the following words : " . . . which have received the general approval of the Committee ".

M. Giannini (Italy) :

Translation : I am inclined to agree with the Chairman's idea, but I venture to propose another wording, namely : " . . . which have been provisionally approved as a compromise ".

M. Raestad (Norway) :

Translation : I do not like the word " compromise ".

M. Giannini (Italy) :

Translation : It would be better to use the word " provisionally ".

M. Gidel (France) :

Translation : I agree.

M. Cohn (Denmark) :

Translation : On second thoughts, I would rather keep the present text and I do not think it necessary to add anything at all.

M. Raestad (Norway) :

Translation : I propose the following text :

" . . . which have been drawn up with a view to their possible incorporation in a general Convention on the territorial sea, and have been provisionally approved."

We must include both " drawn up " and " approved ".

The above text was approved.

The Chairman :

Translation : The remaining articles, namely, Articles 14 to 20 (Annex IV), will be dealt with by the Sub-Committee, and will necessarily be less important.

M. Giannini (Italy) :

Translation : In the general report we might place the preparatory work done by the Sub-Committee in an annex. In this way, that work will not have been wasted.

The Chairman :

Translation : We will do so if you wish.

32. PROTECTION OF FISHERIES : PROPOSAL BY THE ICELANDIC DELEGATION.

M. Giannini (Italy) :

Translation : The Icelandic delegation has presented a proposal which reads as follows :

" The Conference calls attention to the desirability of the States interested giving

sympathetic consideration to a request from a coastal State to assist or participate in scientific researches regarding the supply of fish in the sea and the means of protecting fry in certain local areas of the sea, and, further, to the desirability of their effectively carrying out any proposals resulting from such researches and designed to ensure the international regulation of fishing or restrictions on the use of certain fishing appliances in the areas concerned."

The first part relates to a kind of collaboration in scientific researches. There are already, however, other international organisations dealing with this matter. At the same time, if our Icelandic colleague particularly wishes to press the point, I see no difficulty in accepting this part of his proposal. It really amounts only to an affirmation of co-operation in scientific research.

In the second part, the States are asked to carry out proposals resulting from researches, and I think that is undertaking rather too much. If any particular scientific researches provide a definite result, discussions will follow. We cannot simply tell States that such researches will change their institutions.

I think therefore that our colleague might be satisfied with the first part of his proposal and drop the second.

M. Björnsson (Iceland) :

Perhaps the second paragraph is a little too strong, as the delegate for Italy has suggested, but I should nevertheless like to have some mention made of the idea. I think it necessary, in view of the discussions on the rules in regard to territorial waters, that we should call attention to the fact that it might be desirable to have some regulations regarding the protection of fry in certain local areas of the sea. Such regulations might be drawn up at a later conference.

M. Talas (Finland) :

Translation : The Finnish delegation supports the observations of the Icelandic delegation.

The Chairman :

Translation : The Committee is wholly in favour of the general ideas underlying this proposal, and I therefore suggest that it should be referred to the Sub-Committee, which will examine it together with the Portuguese delegation's proposal.

The Chairman's proposal was adopted.

The Committee rose at 1 p.m.

SEVENTEENTH MEETING

Thursday, April 10th, 1930, at 4 p.m.

Chairman : M. GÖPPERT.

33. EXAMINATION OF THE REVISED TEXT OF THE REPORT OF THE COMMITTEE TO THE CONFERENCE.

The Chairman :

Translation : You have just received the new version of M. François' report (document C.D.I.19(1)). The Drafting Committee this morning revised the text previously distributed to you, and made a number of changes in it. M. François, the Rapporteur, will read it to you.

M. Politis (Greece) :

Translation : I should like to ask for a few slight corrections in paragraphs 4, 5 and 6 which seem to me of primary importance. They attempt to define the Committee's view of the existing state of international law on the question of the State's rights over the territorial sea.

The thesis affirmed in the Committee is that the State's rights, termed sovereignty, prevail over the freedom of the seas, which is not mentioned at all. There is a reference to the principle of freedom of navigation (paragraph 4) ; but there is no mention of the freedom of the seas, which is the basic principle of which freedom of navigation is the application.

My Government's conception, as explained here by my colleague, M. Spiropoulos, is that the predominant position should be given to the freedom of the seas ; that that freedom is the great conquest achieved by the nations ; and that in order to safeguard its legitimate interests — interests regarded as legitimate by the international community — the coastal State has a number of rights over a part of the seas around its coasts. Unfortunately, we have been unable to reach agreement as to the breadth of that sea, and the Greek delegation

stated that it was prepared to sacrifice its conception of the existing law if an agreement were reached. Unfortunately, that agreement has not been reached and, accordingly, the Greek delegation is obliged to retain its conception in its entirety. It therefore considers that these paragraphs of the report do not give a wholly accurate idea of the position, since it is said at the end of the sixth paragraph that " the right of innocent passage through the territorial sea has been generally recognised ".

The main point of disagreement, however, is that this method of interpreting the existing law is referred to as " principles ", the particular words used being : " There was unanimous agreement among the delegations on these principles " (paragraph 7). The difference of opinion which exists, at all events between my own delegation and the Committee as a whole, seems to me to destroy this unanimity.

I therefore ask that, at the beginning of the fifth paragraph, the word " almost " should be inserted before the word " unanimously " ; that in the last line of the sixth paragraph the term " generally recognised " should be replaced by " unanimously recognised " ; and that, in the seventh paragraph, the word " principles " should be replaced by the word " ideas " ; and lastly, that the word " almost " should be added before the word " unanimous ".

The Chairman :

Translation : Are there any objections ?

M. Gidel (France) :

Translation : I think we must vote on the question. We have fully discussed the draft report, and, consequently, I think we can hardly introduce changes without taking a vote.

M. Politis (Greece) :

Translation : I do not object to a vote being taken, but the vote will show that we are not unanimous, and I ask that this absence of unanimity should be recorded in the report.

M. Raestad (Norway) :

Translation : May I point out that what compelled us to adopt the principle of sovereignty was the fact that there is no other concept connoting the State's obligation.

As regards the philosophic basis underlying the idea of sovereignty, I feel sure it is almost a matter of *quot homines tot sententiae.* What has compelled us to use the word " sovereignty " is, I repeat, the idea of obligation.

The Chairman :

Translation : There are two questions before us : first, whether the Committee fully agrees to change the report in this matter of unanimity, and secondly, that of sovereingty.

M. Politis (Greece) :

Translation : I did not ask for a vote on the word " sovereignty ". I simply said I did not agree ; it is thererefore sufficient to say that the Committee is not unanimous.

M. Rolin (Belgium) :

Translation : We cannot possibly say we are unanimous when we are not. I myself tried to avoid the word " sovereignty ". We are not asking for any change in our thirteen articles ; we cannot go back on the words we have used, but I ask M. Gidel to agree that the report shall not state that the Committee was unanimous. That, indeed, is shown in the records.

Abd el Hamid Badaoui Pasha (Egypt) :

Translation : Is it proposed to mention unanimity in the report or in the records ?

M. Politis (Greece) :

Translation : In the report.

Abd el Hamid Badaoui Pasha (Egypt) :

Translation : Then we must be unanimously in agreement on every sentence of the report ; otherwise we can do nothing, and that is obviously not possible.

M. Cohn (Denmark) :

Translation : Need the report expressly mention that the agreement is unanimous ? Would it not be enough to say : " Moreover, it was recognised that international law attributes to each coastal State . . . " ? There is no need to settle the question of unanimity or non-unanimity, since we are only dealing with the report.

The Chairman :

Translation : Does this satisfy M. Politis ?

M. Politis (Greece) :

Translation : The Committee will do as it pleases. My statement will be entered in the records. The report will show that it does not correspond with the records if the word " unanimous " is retained.

M. Giannini (Italy) :

Translation : The present situation compels us to say definitely whether we are unanimous or not.

On several occasions, I have made concessions in order to reach a compromise and to secure unanimity. Since unanimity is to go, I ask that we ascertain on each question whether there is unanimity or not.

The Chairman :

Translation : Can we not find some middle way ? We can avoid using the word " unanimous " and, as M. Cohn suggests, leave the word " agreement " without any qualification at all. Does the Committee agree to this procedure ?

M. François (Netherlands), Rapporteur :

Translation : We should then have to say in the fifth paragraph : " Moreover, it was

recognised . . . " instead of : " Moreover, it was unanimously recognised . . . "

The Chairman :

Translation : In order to avoid the word " unanimous " we might use the words " generally recognised ".

Further, are we to use the word " ideas " instead of " principles " in the seventh paragraph ?

M. François (Netherlands), Rapportcur :

Translation : We should then say " There was agreement among the delegations on these ideas ".

The above proposals were adopted.

M. Giannini (Italy) :

Translation : I ask to have it entered in the records that I voted against.

M. Cohn (Denmark) :

Translation : Passing to the paragraph beginning " Nevertheless, in the Committee's opinion . . . ", I should like the words " the ill-success of this first attempt " to be replaced by some other expression, such as " this state of affairs ".

M. Giannini (Italy) :

Translation : We might say " the result of this first Conference ".

M. Cohn (Denmark) :

Translation : I could accept that wording.

M. Gidel (France) :

Translation : Or " the impossibility of arriving at an immediate Convention ", or again, " difficulties in arriving at an immediate Convention ".

This last wording was put to the vote and adopted.

M. Björnsson (Iceland) :

I wish to point out that a proposal made by the Icelandic delegation regarding the protection of fisheries was passed unanimously by the mixed Sub-Committee, first and second, but it now has another wording. I hope that, although it has another wording, it may be adopted also in full Committee unanimously.

The text in question was adopted.

The report as a whole was adopted (Annex V).

34. FORM TO BE GIVEN TO THE RESOLUTION EMBODYING THE CONCLUSIONS OF THE COMMITTEE'S WORK.

M. Gidel (France) :

Translation : I should like to know what form will be given to the *vœu* drafted by M. Raestad and M. Rolin in the results of the Conference. A question arises, I think, which must be settled. We are faced with these possibilities : either the thirteen articles mentioned in the *vœu* may simply form an annex to the report, which would itself be an annex to the Final Act ; or the thirteen articles might themselves be reproduced in the Final Act, their purport being, of course, left unchanged.

If these articles are simply embodied as an annex to the report, I am afraid their value will be diminished, or even become negligible. I do not want either to overestimate or to depreciate the value of the work we have done. That work is not as complete as we could have wished, but after all we have achieved certain results, and we were unanimously of opinion that those results, which, of course, are provisional, must be preserved as a kind of skeleton framework from which the building can be continued.

If we simply insert these articles as an annex to the report, I am afraid they will be permanently shelved, and for that reason I should like to propose that the Committee insert them in the Final Act, on the clear understanding that their essentially provisional character will not be changed.

We have adopted a text in which it is specifically stated that these articles have been drawn up and approved provisionally, as a possible part of a general Convention on the territorial sea. Let us leave these ideas as they are ; let us quite definitely keep them, so as to reserve all rights and opinions ; but let us emphasise the fact that the results obtained are, despite everything, far from negligible, and that we need not feel ashamed to show them in expert circles and to Governments, or to embody them in the result of the Conference's work.

M. Raestad (Norway) :

Translation : Strictly speaking, the document in question is not a *vœu*, but a resolution we are taking at the conclusion of our work. It was under the auspices of the Council of the League, and at its initiative, that we undertook our work, and now that we have finished it we must, by this resolution, render an account of our discussions to the Council.

As regards the actual substance of the question, I think that in the form in which the resolution is worded it assumes that the thirteen articles referred to by M. Gidel must be embodied in the Final Act. I agree with him. These thirteen articles are mentioned as forming the subject of an annex to the resolution, and as the resolution must necessarily be included in the Final Act, the same course must be taken with the annex containing these articles.

M. de Magalhães (Portugal) :

Translation : As I supported the Norwegian proposal submitted three days ago, I also agree with the proposal made by M. Gidel.

Sir Maurice Gwyer (Great Britain) :

I support M. Gidel's proposal.

M. Giannini (Italy) :

Translation : We must be quite clear as to the purport of this draft. It was drawn up by the Sub-Committee. The full Committee has had no opportunity whatever of examining it fully, and for that reason we have emphasised the fact that it is only provisionally approved. I quite understand M. Gidel's anxiety that this draft should appear in one form or another in the Final Act, but I must point out that no provisional draft is ever inserted in a Final Act, much less a draft which has not even been approved in accordance with our Rules of Procedure.

We must indicate in the Final Act that the Second Committee has drawn up a report, and we must state its contents ; we shall then insert the *vœu* or resolution. If we want the draft to appear in the Final Act, we might add at the end of paragraph 4 of the resolution the words " in the following annex ". The thirteen articles would then be included as an annex to the resolution.

If you agree with this suggestion, I would beg the Committee not to ask the General Drafting Committee to revise these articles, in view of their provisional nature ; otherwise the Drafting Committee would be obliged to revise a provisional draft which, as will appear from the report, is no more than material prepared for a subsequent conference.

M. Gidel (France) :

Translation : I do not think we are in disagreement with M. Giannini, who, as Chairman of the General Drafting Committe, knows exactly how to carry out the desire to embody, direct in the Final Act, the thirteen articles adopted. The proposal to describe these articles as an annex, at the same time reproducing them in the Final Act itself, seems to to me a sufficiently good way of drawing attention to the results of our work. We can accordingly adopt this procedure.

The Chairman :

Translation : Does the Committee agree to proceed in accordance with M. Giannini's proposal, which now has the support of M. Gidel ?

The proposal was adopted.

35. CLOSE OF THE SESSION.

The Chairman :

Translation : We have now come to the end of our work. Our Committee, less fortunate than the First Committee, cannot submit to the Conference a Convention ready to be signed. Although we have found that it was possible to reach agreement on all the other questions, thanks to the conciliatory spirit displayed by all the delegations, we have been forced to recognise that, for the moment, agreement cannot be reached on the main question of the breadth of the territorial waters subject to the jurisdiction of the coastal State. Yet perhaps that which seems too difficult to-day will not be so to-morrow. We hope so ; indeed we believe so. We must therefore continue our efforts.

I hope that although we must resign ourselves to-day to this adjournment of the question, we shall, at some not too distant date, have an opportunity of affixing our signatures to a convention settling all the problems we have been considering here for five weeks of assiduous, conscientious and often strenuous work. I think that that work will not have been wasted, and that some day it will help towards the conclusion of an agreement.

I have now to perform a duty which I think you will also consider to be incumbent upon the Committee as a whole, that of thanking our Vice-Chairman, His Excellency M. Goicoechea, who has at all times afforded us most useful and indeed invaluable help in our discussions. We pay a tribute to his high abilities, tact and diplomatic skill, and we are only sorry that we have had to dispense with his wise counsel during part of our discussions.

We must thank the Chairman of the first Sub-Committee, M. de Magalhães. It is due to his wise, skilful and conciliatory efforts that the legal articles have been safely brought into port, or, at all events, into a haven of refuge.

I now turn to our Rapporteur, M. François. We shall, I am sure, unanimously express to him our thanks for the admirable work he has done and for his exact and lucid rendering of the Committee's decisions.

We also owe our gratitude to the members of the Drafting Committee : Sir Maurice Gwyer, Professor Gidel and M. Sjöborg, and to the delegates who kindly afforded their assistance to the Drafting Committee : Mr. Miller, M. Raestad and M. Giannini, and, lastly, M. Rolin, who knows how highly I appreciate his talents and his zeal.

Nor must I forget our Secretaries, Mr. Abraham and M. van Ittersum. They have given us the benefit of all the experience they have acquired with the League. They have a complete knowledge of our work, and I could never have accomplished my task without their loyal and devoted support.

The list is not yet finished. We must thank our interpreters, whose skill I always admire and who in their translations often express themselves better than the speaker himself. We must also thank our verbatim reporters, whose lives we have made so hard during these weeks of discussions.

We must also thank all those whom we never see, the staff of the League, which has worked every day until a late hour of the night in order that we should receive at eight o'clock next morning the Minutes and documents we have to study before the day's meetings. These collaborators of ours have rendered faithful service, and have well deserved our gratitude.

I must not forget the experts, who also have a claim upon our deep gratitude, and

particularly their distinguished Chairman, Vice-Admiral Surie.

Lastly, gentlemen, let me on my own behalf tell you how sincerely and cordially grateful I am to you all for the help you have given me, without which I could never have fulfilled the duties you entrusted to me. I shall always retain a happy memory of our work together.

Sir Maurice Gwyer (Great Britain):

Mr. Chairman — In the warm and generous words which you have just addressed to the Committee, one name was not mentioned, but I know that the Committee will not wish to disperse after the conclusion of its work without paying a most sincere tribute to the skill, courtesy, and, above all, the patience which its Chairman has displayed during the course of our three weeks' work.

Our Chairman has had to preside over a Committee which contained singularly diverse elements. We have listened to the passionate oratory of Portugal, to the eloquence of Greece; to the pregnant and incisive brevity of Germany and Japan; to the weighty interventions of the United States, we have watched the summer lightening of Italy. We have realised how almost pleasant it can be to disagree with M. Raestad, because the subscquent reconciliation is so agreeable; and we have admired the deft skill with which M. Gidel has wielded his rapier and the manner in which he gets through his adversary's guard.

But, with all these diverse elements, with so deep a cleavage of opinion on fundamental topics, is it not an extraordinary thing that, throughout the whole of our debates, no word has been uttered which, I think, any of us has regretted or would have wished to remain unsaid, and that the harmony and the friendliness of our meetings have increased rather than diminished as our task proceeded? For that happy result, Mr. Chairman, I take leave to say that the Committee is mainly indebted to yourself. I should like, therefore, if I may be permitted to do so, to move a resolution in these terms:

> "That the Second Committee hereby tenders to its Chairman its sincere thanks for his unwearying efforts on its behalf; it desires to place on record its warm appreciation of the services rendered by its Chairman, and its deep sense of the courtesy and ability with which he has presided over all its discussions."

Mr. Miller (United States of America):

On behalf of the delegation of the United States, I desire to second the resolution proposed by Sir Maurice Gwyer, and most heartily and cordially to concur in what he has so well said. I am sure that on this occasion I speak for all the members of this Commission when I say that our sentiments for our Chairman are those of affectionate admiration.

To you, Sir, is due that serene and pleasant atmosphere which has continued throughout our deliberations, and to you also is due the fact that we shall all leave this Committee with the happiest memories of its deliberations, over which you have so ably presided.

The Chairman:

Translation: Gentlemen — I feel quite overwhelmed at all the — I am sure unmerited — praise that has been bestowed upon me. I am none the less grateful to Sir Maurice Gwyer and to Mr. Miller for what they have just said, and to the Committee for the marks of approval with which it received their observations.

M. Gidel (France):

Translation: Everything that needed to be said has been said most authoritatively by Sir Maurice Gwyer and Mr. Miller. Since we have before us a question of procedure and a motion, I will mercly say that this is the first time we have been able to dispense with a vote. The applause with which the motion has been received makes it clear that we are absolutely unanimous.

M. Giannini (Italy):

Translation: I should like, in the first place, to say that I wholeheartedly support the proposal just made.

I would add that it has always been a pleasure for myself, and I am sure for all my colleagues as well, to observe the cordial spirit in which our discussions have always been pursued, deeply though we were divided on the question submitted to us.

Each of us has defended his case in his own way. For my part, I have done this perhaps with a certain liveliness which although expressed somewhat sharply was none the less friendly. Everything I have said was said in a spirit that could not wound the feelings of any of my colleagues.

Now that we have reached the end of our work, I can confidently assert that I leavc this Committee with a mind and conscience at ease. I venture to add that my colleagues can say the same.

A few minutes ago, we removed from our report the word "ill-success", because we did not like it. There has been no ill-success. We have brought our points of view nearer together and we have prepared the work of to-morrow.

Sir Maurice Gwyer, with that British shrewdness which we all admire, has said that the best course would be to regard the whole question as postponed. In politics, the greatest wisdom is sometimes shown in postponement.

For these reasons, I protested at one of our recent meetings against the feeling of failure which was evinced because we were unable to affix our signatures to a document setting forth the conclusions of our work.

That, gentlemen, will be the task of to-morrow. Sometimes it is best to wait. In the meantime, we shall prepare our work and in that way, instead of having a lame Convention, we shall have a sound once. To-morrow, we, or other representatives of our countries, will be able to sign a Convention which will be due mainly to the work we have just done.

I do not feel the sadness which seems to afflict many of my colleagues. We have done good work, and I for my part feel that I have done my duty to the country I represent and to mankind as a whole. The torch is not extinguished.

In this spirit, I wish to thank not only our Chairman but all my esteemed colleagues for the cordial hearing they have given me. Despite our disagreement, I thank them too for having, on certain questions, understood my point of view.

M. de Magalhães (Portugal) :

Translation : I desire to convey to our Chairman my heartfelt thanks for his kind and friendly words, and to give my sincere support to all the other proposals he has made and to that submitted by the delegate of the United Kingdom.

I take the present opportunity to thank all the members of the first Sub-Committee not only for their kindness towards myself, but also for the goodwill they have shown in our work, thereby enabling us to produce to-day a document which, though incomplete and imperfect — and it could not be otherwise, in view of the circumstances in which we have had to work — can nevertheless, as Professor Gidel has said, be laid before expert circles and the various Governments.

Now that the work of this Committee has reached its end, I desire, on my own behalf and on behalf of the Portuguese delegation, to express the most sincere and ardent good wishes for the continuation of this work of codifying international law in which we place such high hopes.

Lastly, I venture to recall one thing that Mr. Miller said in his speech at out first meeting. He said that he hoped that we should part friends. We shall all agree to-day that Mr. Miller's hope has been fulfilled, and we shall all retain happy and cordial memories of our work together.

M. Nagaoka (Japan) :

Translation : In the absence of my colleague Viscount Mushakoji, I desire on his behalf and on behalf of the Japanese delegation, and also on my own behalf, Mr. Chairman, to offer you our heartfelt thanks and to associate myself in all sincerity with Sir Maurice Gwyer's proposal.

Although our work has not resulted in a Convention, it has been a good experience, and we have had a useful exchange of views which will enable expert circles, as it has enabled this Committee, to realise the difficulties connected with the question of territorial waters. In this respect, our work has certainly not been in vain, and we earnestly hope it will furnish a valuable guide for the future conference. On behalf of the Japanese delegation I thank the Chairman for the skilful and conciliatory manner in which he has conducted our proceedings.

The Chairman :

Translation : I thank you, gentlemen, for your kind words. In concluding our work we cannot do better than associate ourselves with the words of hope and confidence uttered by M. Giannini and M. de Magalhães. Let us have hope and confidence in final success, and let us trust it will come soon.

I declare the session of the Second Committee of the Conference for the Codification of International Law closed.

The Committee rose at 5.45 p.m.

ANNEX I.

BASES OF DISCUSSION DRAWN UP BY THE PREPARATORY COMMITTEE, ARRANGED IN THE ORDER WHICH THAT COMMITTEE CONSIDERED WOULD BE MOST CONVENIENT FOR DISCUSSION AT THE CONFERENCE

Nature of the Territorial Waters.

Basis of Discussion No. 1.

A State possesses sovereignty over a belt of sea round its coasts ; this belt constitutes its territorial waters.

Basis of Discussion No. 2.

The sovereignty of the coastal State extends to the air above its territorial waters, to the bed of the sea covered by those waters and to the subsoil.

Breadth of the Territorial Waters.

Basis of Discussion No. 3.

The breadth of the territorial waters under the sovereignty of the coastal State is three nautical miles.

Basis of Discussion No. 4.

Nevertheless, the breadth of the territorial waters under the sovereignty of the coastal State shall, in the case of the States enumerated below, be fixed as follows : . . .

Basis of Discussion No. 5.

On the high seas, adjacent to its territorial waters, the coastal State may exercise the control necessary to prevent, within its territory or territorial waters, the infringement of its Customs or sanitary regulations or interference with its security by foreign ships. Such control may not be exercised more than twelve miles from the coast.

Limits of the Territorial Waters.

Basis of Discussion No. 6.

Subject to the provisions regarding bays and islands, the breadth of territorial waters is measured from the line of low-water mark along the entire coast.

Basis of Discussion No. 7.

In the case of bays the coasts of which belong to a single State, the belt of territorial waters shall be measured from a straight line drawn across the opening of the bay. If the opening of the bay is more than ten miles wide, the line shall be drawn at the nearest point to the entrance at which the opening does not exceed ten miles.

Basis of Discussion No. 8.

The belt of territorial waters shall be measured from a straight line drawn across the entrance of a bay, whatever its breadth may be, if by usage the bay is subject to the exclusive authority of the coastal State ; the onus of proving such usage is upon the coastal State.

Basis of Discussion No. 9.

If two or more States touch the coast of a bay or estuary of which the opening does not exceed ten miles, the territorial waters of each coastal State are measured from the line of low-water mark along the coast.

Basis of Discussion No. 10.

In front of ports, territorial waters are measured from a line drawn between the outermost permanent harbour works.

Basis of Discussion No. 11.

In front of roadsteads which serve for the loading and unloading of ships and of which the limits have been fixed for this purpose, territorial waters are measured from the exterior boundary of the roadstead. It rests with the coastal State to indicate what roadsteads are in fact so employed and what are the boundaries of such roadsteads from which the territorial waters are measured.

Basis of Discussion No. 12.

Each island has its own territorial waters.

Basis of Discussion No. 13.

In the case of a group of islands which belong to a single State and at the circumference of the group are not separated from one another by more than twice the breadth of territorial waters, the belt of territorial waters shall be measured from the outermost islands of the group. Waters included within the group shall also be territorial waters.

The same rule shall apply as regards islands which lie at a distance from the mainland not greater than twice the breadth of territorial waters.

Basis of Discussion No. 14.

In order that an island may have its own territorial waters, it is necessary that it should be permanently above the level of high tide.

In order that an island lying within the territorial waters of another island or of the mainland may be taken into account in determining the belt of such territorial waters, it is sufficient for the island to be above water at low tide.

Basis of Discussion No. 15.

When the coasts of a strait belong to a single State and the entrances of the strait are not wider than twice the breadth of territorial waters, all the waters of the strait are territorial waters of the coastal State.

Basis of Discussion No. 16.

When two States border on a strait which is not wider than twice the breadth of territorial waters, the territorial waters of each State extend in principle up to a line running down the centre of the strait ; if the strait is wider, the breadth of the territorial waters of each State is measured in accordance with the ordinary rule.

Basis of Discussion No. 17.

Where a strait is merely a channel of communication with an inland sea, the rules regarding bays apply to such strait and sea.

Basis of Discussion No. 18.

The base-line from which the belt of territorial waters is measured in front of bays, ports and roadsteads forms the line of demarcation between inland and territorial waters.

The waters of a river are inland waters down to the point at which it flows directly into the sea, whatever be its breadth at that point. If the river flows into an estuary, the rules applicable to bays apply to the estuary.

Foreign Ships passing through Territorial Waters.

Basis of Discussion No. 19.

A coastal State is bound to allow foreign merchant ships a right of innocent passage through its territorial waters ; any police or navigation regulations with which such ships may be required to comply must be applied in such a manner as to respect the right of passage and without discrimination.

The right of innocent passage covers persons and goods.

The right of passage comprises the right of anchoring so far as is necessary for purposes of navigation.

Basis of Discussion No. 20.

A coastal State should recognise the right of innocent passage through its territorial waters of foreign warships, including submarines navigating on the surface.

A coastal State is entitled to make rules regulating the conditions of such passage without, however, having the right to require a previous authorisation.

A coastal State is entitled to make rules governing the anchoring of foreign warships in its territorial waters, but it may not forbid anchoring in case of damage to the ship or of distress.

Basis of Discussion No. 21.

In foreign territorial waters, warships must respect the local laws and regulations. Any case of infringement will be brought to the attention of the captain : if he fails to comply with the notice so given, the ship may be required to depart.

Basis of Discussion No. 25.

No charge may be levied upon foreign ships by reason of their passing through territorial waters.

Charges may be levied upon a foreign ship passing through territorial waters only as payment for specific services rendered to the ship itself. Such charges must be levied without discrimination.

Basis of Discussion No. 22.

The criminal jurisdiction of the coastal State may not be exercised in regard to crimes or offences committed on a foreign merchant ship passing through territorial waters except : (1) Where the consequences of the crime or offence extend beyond the ship ; or (2) where the crime or offence is of a nature to disturb the peace of the country or the maintenance of order in the territorial waters ; or (3) where the assistance of the local authorities has been requested by the captain of the ship or the consul of the State whose flag it flies.

Basis of Discussion No. 23.

A person whose arrest is sought by the judicial authorities of the coastal State may be arrested on board a foreign merchant ship within the territorial waters of the State.

Basis of Discussion No. 24.

When a foreign merchant ship is passing through territorial waters but is neither coming from nor bound for a port of the coastal State, the authorities of that State may not, in the exercise of the civil jurisdiction of the State, divert the ship from its course for the purpose of levying an execution or taking measures to preserve the rights of parties to any legal proceedings, except where such action is taken in consequence of events occurring in the waters of the State the effects of which extend beyond the ship itself.

Foreign Ships in Ports.

Basis of Discussion No. 27.

The criminal jurisdiction of the State to which the port belongs may not be exercised in regard to crimes or offences committed on board a foreign merchant ship lying in a port except : (1) Where the crime or offence was committed by or against persons not forming part of the crew ; or (2) where, in the opinion of the competent local authority, it was of a nature to disturb the peace of the port ; or (3) where the assistance of the local authorities was requested by the captain of the ship, the consul of the country whose flag the ship flies, or a person directly affected.

Basis of Discussion No. 28.

The local authorities are entitled to arrest an accused person on board a foreign merchant ship lying in a port, even though the arrest is occasioned by an offence committed outside the ship.

Continuation on the High Seas of Pursuit begun in Territorial Waters.

Basis of Discussion No. 26.

A pursuit of a foreign ship lawfully begun by the coastal State within its territorial waters on the ground of infringement of its laws or regulations may be continued on the high seas and the coastal State may arrest and take proceedings against the ship so pursued, provided that the pursuit has not been interrupted. The right of pursuit ceases so soon as the ship enters the territorial waters of its own country or of a third Power.

Any such capture of a ship on the high seas shall be notified without delay to the State whose flag it flies.

ANNEX II.

OBSERVATIONS AND PROPOSALS REGARDING THE BASES OF DISCUSSION PRESENTED TO THE PLENARY COMMITTEE BY VARIOUS DELEGATIONS.

Belgium.

AMENDMENT TO BASIS OF DISCUSSION No. 1, CIRCULATED TO THE MEMBERS OF THE COMMITTEE ON MARCH 18TH, 1930.

Subject to the reservations and within the limits to be laid down hereafter, the territory of a State extends to a belt of sea bathing its coasts. This belt constitutes the territorial sea and, subject to the same reservations and limitations, any question relating to its administration or control comes within the exclusive jurisdiction of the coastal State.

Colombia.

AMENDMENTS TO BASES OF DISCUSSION NOS. 1 AND 2, CIRCULATED TO THE MEMBERS OF THE COMMITTEE ON MARCH 25TH, 1930.

Basis of Discussion No. 1.

A State possesses sovereignty over a belt of sea round its coasts ; this belt is the *national sea*, also called the *territorial sea*, on which the coastal State exercises all kinds of rights with the limitations imposed by its own laws or by international law and, in particular, by the treaties in force and the provisions of the present Convention.

Basis of Discussion No. 2.

The *national sea* comprises its waters with their volume and area, their bed and subsoil and the air above them.

(The explicit mention of the *volume* and *area* of maritime waters belonging to the coastal State is not without importance.)

PROPOSALS OR SUGGESTIONS WHICH MIGHT SERVE AS A BASIS FOR A DECLARATION OR BE INSERTED IN THE GENERAL CONVENTION, CIRCULATED TO THE MEMBERS OF THE COMMITTEE ON MARCH 25TH, 1930.

I. The sea has no *overlord* in the legal sense of the term. It cannot really be the subject of acts of dominion or possession, since that would be contrary to the principles which are universally recognised and perpetuated in legal theory and practice, more especially in the matter of landed property. Nevertheless, the principle admits of certain just and necessary exceptions.

II. The sea is free ; nevertheless, we would repeat that it cannot be appropriated except in certain coastal belts, and even then only subject to certain limitations and obligatory conditions laid down by international law. Consequently, no State or community can have exclusive rights over the sea apart from those possessed by coastal States under international law.

III. Any State having a sea coast has rights — natural or acquired — to exercise over a specific breadth of sea an exclusive power termed *sovereignty*, which connotes a proprietary or dominion right, subject to restrictions of an international character. This *sovereignty* or local maritime *jurisdiction* is based on grounds which are accepted without dispute, are more or less complex and urgent according to individual cases, and are connected with the existence of the State, its essential needs, its self-preservation, security, defence, commerce and general development. These grounds are, as a rule, tacitly accepted by other States and often are also based on the geographical or historical characteristics of the country. Usually the vital interests of the State are concerned, though what those interests are can be determined only by the State itself.

IV. As already mentioned — and indeed it is self evident — the natural or acquired rights which coastal States possess over the sea are not always equal and vary according to the needs and vital interests and particular circumstances of each State. In view of the facilities now available for obtaining information and the opening of a worldwide register at the Secretariat of the League of Nations, or in some other international organistion, it will always be possible to ascertain the exact situation in any part of the world as regards the sea. Thus, the width of the *national sea* — also termed the *territorial sea* — may be fixed at will by the coastal State which has a primordial and indeed vital interest in that sea. At the same time, the breadth in question cannot be less or more than a specified minimum and maximum.

V. Where the maritime belts in which the coastal States have their individual powers and rights end, there begins the high sea which is the *international sea* in the real sense of the term.

VI. The high sea is neither *res unius*, nor *res nullius*, nor *res communis* — *res communis*, that is, in the sense of *common ownership*. There is, on the high sea, an international right of use and of enjoyment, which may, to a very great degree, be regulated by all countries in accordance with the needs of a common civilisation.

VII. It is to be hoped that war will never again occur except in certain regions of the high sea. War, which to-day is more to be dreaded than ever, would, if it ever unfortunately broke out, be less terrible and less disastrous to mankind if it took place in the vast solitude of the ocean than in regions inhabited by children, women and old people, and enriched by all the best and fairest gifts of civilisation. In *warfare at sea*, the horrors of the calculated and systematic destruction of life would be a spectacle more brutal sometimes, but certainly less contemptuous of the rights which must be safeguarded in the case of armed conflict.

VIII. All the declarations which have just been made with regard to the sea, in the stricter sense, necessarily apply by analogy not only to maritime waters, both as to the volume and area, but also to their bed and subsoil and the air above them.

* * *

The time has come to give a positive form to the principles laid down in this memorandum, so that we may produce a monumental work worthy of the progress of law. Almost all these principles have already been virtually recognised by States and consequently form part of public international law. Nevertheless, some of the questions which the delegation of the Republic of Colombia has the honour to submit to you have hitherto formed the subject of widely different definitions, opinions, and interpretations. Indeed, it is the absence of treaty rules and definite texts that is responsible for the present uncertainty in this matter, particularly in the field of doctrine. Happily, the questions which we have to settle, having already attained a sufficient degree of maturity, will shortly be added to the treasures of positive international law. This is our mission, which, calling as it does for both knowledge and responsibility, obliges us to lay down the law and confirm fundamental principles that are closely bound up with world peace and civilisation. We must therefore, by complete agreement between the various States, reach harmonious solutions in the domain of law, in order to consolidate this peace and multiply the blessings of our civilisation.

Denmark.

Amendment to Basis of Discussion No. 5, circulated to the Members of the Committee on March 18th, 1930.

Add after the words " its Customs or sanitary regulations " the words " or regulation for the protection of fry ".

Amendments to Bases of Discussion Nos. 20, 22, 23, 25 and 26, circulated to the Members of the Committee on March 22nd, 1930.

Basis of Discussion No. 20.

Second paragraph. — Omit the last passage which runs " without however having the right to require a previous authorisation ", or add the following words " except in certain limited areas ".

Third paragraph. — Omit the last passage " but it may, etc. ".

Basis of Discussion No. 22.

Omit the whole article or insert at the head of the article the following text :

" Reserving the right of the coastal State to establish in its legislation other rules, the criminal jurisdiction of the State ought ordinarily to be exercised only in regard to crimes or offences committed on a foreign merchant ship passing through territorial waters in the following cases."

Basis of Discussion No. 23.

Insert, after " the coastal State ", the words " in order to raise criminal prosecution ".

Basis of Discussion No. 25.

Second paragraph : The English text uses the wording " to the ship itself " and the French text " à ce navire ". The last seems to be the best text.

Basis of Discussion No. 26.

First paragraph : Insert in the second line, after " the coastal State ", the words " while the foreign ship was . . . "

Second paragraph : To be omitted.

AMENDMENTS TO BASES OF DISCUSSION NOS. 9, 13, 14, 15 AND 16, CIRCULATED TO THE MEMBERS OF THE COMMITTEE ON MARCH 29TH, 1930.

Basis of Discussion No. 9.

Delete the words " of which the opening does not exceed ten miles ", and add the following two paragraphs :

" If the breadth at the opening or elsewhere in the bay is six miles or less, the coastal States are entitled to consider the water area within this line as being under their exclusive authority even if the distance between the coasts here should be more than six miles.

" The provisions in this article do not change already existing treaties in which the extent of territorial waters in bays or estuaries has been settled between two or more boundary States."

Basis of Discussion No. 13.

Add the following as a final paragraph :

" At groups of islands, port entrances, roadsteads and fjords, where the waters by usage hitherto have been considered inland waters of the coastal State, the said waters should in the future have the same character."

Basis of Discussion No. 14.

Insert in the second paragraph, fourth line, instead of the words " to be above water at low tide ", the following words " not to be constantly submerged ", and add the following as a final paragraph :

" Filling up, construction of artificial islands and the like within the coastal State's territorial waters, or on the high sea outside the territorial waters of another State, cannot modify the extent or calculation of the other State's territorial waters without agreement with this State."

Basis of Discussion No. 15.

Delete the words " the entrances of " and " are " in the second line and insert after the word " strait " in the same line the words " on two places is ".

Insert further after " strait " in the third line the words " between these two places ".

Basis of Discussion No. 16.

Insert after the word " two " in the first line the words " or more " and after the word " wider " in the same line the words " at the entrances".

Add, as a last paragraph, the following clause :

" As to bays and islands the ordinary rules are followed as far as possible. "

Egypt.

OBSERVATIONS REGARDING THE REPLY OF FRANCE ON POINT 1 OF THE LIST OF POINTS, CIRCULATED TO THE MEMBERS OF THE COMMITTEE ON MARCH 17TH, 1930.

While fully approving Basis of Discussion No. 1, the Egyptian delegation thinks it desirable to point out that the French reply to Point 1, after indicating that the right of a State over its territorial waters may be limited by treaty, gives as an example the Convention of October 29th, 1888, on the Suez Canal. Whatever limitations may be imposed on the sovereignty of Egypt by this Convention, the latter relates only to the Suez Canal, which can in no sense be regarded as coming within territorial waters. The

canal is nothing more than a part of Egyptian territory. The French reply might convey the impression that Egypt's sovereignty over her territorial waters is subject to restrictions, and this impression the Egyptian delegation is anxious to prevent. Egypt, as she has already stated in her reply to Point 1, does not recognise any special rights as belonging to other States within the limits of her territorial waters.

Finland.

Amendment to Basis of Discussion No. 5, circulated to the Members of the Committee on April 7th, 1930.

In a belt which is contiguous to the territorial sea and which may not exceed twelve miles from the base-line, a coastal State may take the necessary steps to prevent a foreign vessel within this belt from committing or beginning to commit an infringement of the Customs laws or regulations of the State, and also to punish such infringements. It is understood that the coastal State possesses the same power in regard to a vessel participating in an infringement committed on the territory of the State.

The coastal State may also take such steps as are indispensable to prevent any interference with its security threatening it from foreign vessels within the said belt.

France.

General Observations regarding the Terminology to be employed, circulated to the Members of the Committee on March 17th, 1930.

The French delegation, before drafting the textual amendments or modifications which it will duly submit in accordance with the request of the President of the Conference, thinks that it would perhaps be desirable, at the outset of the Committee's work, to give careful attention to the terminology to be used in the course of the discussions.

It would be desirable, before discussing the various Bases suggested, to define the exact meaning and scope of the terms employed. If the terms to be used are chosen and their meaning defined — without prejudice, of course, to fundamental questions — it would be of great help in the discussions, as the same words would not be used in different senses ; it would be particularly useful since there are certain terms applied to the waters adjacent to State territory which have not always, in international and national doctrine and practice, been given either the same meaning or the same field of application.

From the Bases of Discussion submitted to the Committee, it appears that four categories of waters may be distinguished. Each should be given a specific name, the meaning of which would be clear to all the delegates during the discussion of each particular question.

Counting from land to sea, these categories are as follows — inland waters, territorial waters, adjacent waters, the high sea.

The Committee will doubtless agree with the French delegation as to the desirability of taking a decision upon the adoption of this terminology before beginning the examination of the Bases of Discusion.

Amendment to Basis of Discussion No. 19, circulated to the Members of the Committee on March 21st, 1930.

In regard to Basis of Discussion No. 19, the French delegation proposes the following wording :

> " A coastal State is bound to allow foreign ships, *other than ships belonging to naval forces*, a right of innocent passage through its territorial waters, *it being understood that fishing vessels will not actually engage in fishing and that commercial submarines will not be entitled to make use of this right of passage except on the surface.*
>
> " Any police or navigation regulations with which such ships may be required to comply . . . (the rest as in Basis No. 19, framed by the Preparatory Committee)."

Amendments to Bases of Discussion Nos. 19, 21, 22, 23, 24, 27 and 28, circulated to the Members of the Committee on March 21st, 1930.

Bases of Discussion Nos. 19, 22, 23, 24, 27 and 28.

The French delegation proposes that the term : " vessels other than vessels belonging to naval forces " should be substituted in these Bases of Discussion for the term " merchant ships ".

Basis of Discussion No. 21.

The French delegation proposes that Basis of Discussion No. 21, proposed by the Preparatory Committee, should be amended as follows :

> " In foreign territorial waters, vessels belonging to naval forces must respect the local laws and regulations. Any *failure to observe the same* will be brought to the attention of the captain ; if he fails to comply with the notice so given, the ship may be required to depart."

PROPOSAL REGARDING BASIS OF DISCUSSION NO. 2, CIRCULATED TO THE MEMBERS OF THE COMMITTEE ON MARCH 21ST, 1930.

Subject to the provisions of Basis of Discussion No. 2, each of the contracting parties shall, in so far as it is concerned, enact rules regarding the admission, navigation and status of foreign aircraft on the surface or above the waters referred to in the said Basis, provided always they conform to the stipulations of the general or bilateral international Conventions on these matters to which the State in question is or may become a party.

AMENDMENT TO BASIS OF DISCUSSION NO. 25, CIRCULATED TO THE MEMBERS OF THE COMMITTEE ON MARCH 22ND, 1930.

The French delegation proposes the following wording for Basis of Discussion No. 25 :

" No charge may be levied upon foreign ships by reason of their mere passage through territorial waters.

" Charges may be levied upon a foreign ship passing through territorial waters only as payment for services rendered to the ship itself.

" Such charges shall be levied without discrimination."

Germany.

PROPOSAL REGARDING BASIS OF DISCUSSION NO. 7, CIRCULATED TO THE MEMBERS OF THE COMMITTEE ON MARCH 17TH, 1930.

Add to Basis of Discussion No. 7 the following new paragraph :

" This rule shall apply only to bays the length of which is not less than five marine miles, reckoned from the above-mentioned line."

Great Britain and Northern Ireland.

AMENDMENTS TO BASES OF DISCUSSION NOS. 19, 20 AND 21, 22 AND 23, 24, 27, CIRCULATED TO THE MEMBERS OF THE COMMITTEE ON MARCH 22ND, 1930.

These amendments are submitted in response to the desire expressed by the Bureau that delegations should formulate their views as early as possible. They should not be taken as representing an attempt to submit a text in the form of a final draft, and the delegation wishes to reserve the liberty of amending or withdrawing any of the amendments proposed during the course of the discussion.

Bases of Discussion Nos. 19, 20 and 21.

Add the following new Basis :

" *Definition of the Right of Innocent Passage.*

" 1. The right of innocent passage is the right of a foreign ship not proceeding to a port of a coastal State to enter and navigate the territorial waters of that State for the purpose only of passing through them.

" 2. A passage is not innocent if the ship makes use of the territorial waters of the coastal State for any purpose prejudicial to the safety, good order or revenues of the coastal State.

" 3. The right of innocent passage includes the right to anchor and the like, so far as the same may be incidental to the ordinary course of navigation."

Substitute for the existing text of Bases of Discussion Nos. 19, 20 and 21 the following :

" 1. A coastal State is bound to allow foreign ships to pass through its territorial waters in the exercise of the right of innocent passage.

" 2. A coastal State may require foreign ships exercising the right of innocent passage to comply with such regulations as may be prescibed by the local law :

" *(a)* For the safety of traffic and of traffic ehannels ;

" *(b)* For the protection of the waters of the coastal State from oil and ship's refuse ;

" *(c)* For the protection of any exclusive rights of fishing possessed by the coastal State :

" *(d)* For such other matters as, in accordance with international usage and practice, a coastal State may regulate in the case of foreign ships exercising the right of innocent passage ;

but may not enforce any regulations in such a way as to discriminate between its own ships and foreign ships, other than fishing craft, or between the ships of one State and those of another.

" 3. Save as aforesaid, a foreign ship shall be entitled to exercise the right of innocent passage without let or hindrance.

" 4. The entry into and the passage through territorial waters of a foreign warship shall continue to be regulated by existing international usage and practice."

Bases of Discussion Nos. 22 and 23.

Substitute for the existing text :

" A coastal State may take steps to arrest and bring to justice a person on a foreign ship exercising the right of innocent passage, other than a ship which is owned by a foreign State, in the following cases, but not otherwise, viz :

" (1) If the crime or offence in respect of which such arrest is to be made was committed on board the ship within the national or territorial waters of the coastal State, and

" *(a)* The consequences of the crime or offence extend beyond the ship ; or

" *(b)* The crime or offence is, in the opinion of the competent local authority, of a nature to disturb the peace of the country or the maintenance of order in the territorial waters ; or

" *(c)* The assistance of the local authorities has been requested by the person in charge of the ship, or the consul of the State whose flag it flies ;

" (2) If the crime or offence in respect of which the arrest is to be made was committed within the jurisdiction of the coastal State elsewhere than on board the ship, or within the jurisdiction of another State which has made a lawful demand upon the coastal State for the extradition of the offender."

Basis of Discussion No. 24.

Substitute for the existing text :

" A coastal State shall not stop or divert a foreign ship exercising the right of innocent passage for the purpose of exercising civil jurisdiction against any person on the ship, and may not seize or arrest the ship in any civil proceedings other than proceedings taken in consequence of events occurring within the jurisdiction of the coastal State : provided that nothing in this article shall be deemed to authorise the seizure or arrest of any ship which is owned by a foreign State."

Basis of Discussion No. 27.

1. A coastal State shall not exercise its criminal jurisdiction in respect of any crime or offence committed on board a foreign ship when in the national or territorial waters of the coastal State otherwise than in the exercise of the right of innocent passage, which is concerned solely with the internal discipline of the ship, or was committed on the ship by one member of the crew against another, unless the crime or offence is, in the opinion of the competent local authority, of a nature to disturb the peace or good order of the coastal State, or unless the assistance of the local authorities is requested by the person in charge of the ship, the consul of the country whose flag the ship flies, or a person directly affected by the crime or offence.

2. The coastal State may arrest any person on board a foreign ship, other than a ship which is owned by a foreign State, when in the national or territorial waters of the coastal State otherwise than in the exercise of the right of innocent passage, in respect of a crime or offence committed within the jurisdiction of the coastal State elsewhere than on board the ship or within the jurisdiction of another State which has made a lawful demand upon the coastal State for the extradition of the offender.

AMENDMENTS TO BASES OF DISCUSSION NOS. 7, 8, 9, 11, 14, 15 AND 18, CIRCULATED TO THE MEMBERS OF THE COMMITTEE ON MARCH 25TH, 1930.

These amendments are submitted in response to the desire expressed by the Bureau that delegations should formulate their views as early as possible. They should not be taken as representing an attempt to submit a text in the form of a final draft, and the delegation wishes to reserve the liberty of amending or withdrawing any of the amendments proposed during the course of the discussion.

Basis of Discussion No. 7.

Omit the second sentence.

Insert in the first sentence, after the word " State ", the words " and the opening of which is not more than six miles wide."

Basis of Discussion No. 8.

Substitute for the existing text :

" 1. The belt of territorial waters shall be measured from a straight line drawn across the entrance of a bay whatever its breadth may be, if, subject to the provisions of this article, the coastal State is able to establish a claim by usage, prescription or otherwise, that the waters of the bay are part of its national waters.

" 2. For the purpose of determining whether the waters of any particular bay are or are not part of the national waters of the coastal State, regard shall always be had to the configuration of the bay, that is to say, the shape and degree of enclosure of the area of water therein, with special reference to the extent to which it penetrates into the land."

Basis of Discussion No. 9.

Delete " of which the opening does not exceed ten miles " and, at the end of the Basis, add the following words :

" Where the width at the opening of the bay is less than twice the breadth of the belt of territorial waters, the territorial waters of each coastal State shall in principle extend as far as the median line."

Basis of Discussion No. 11.

Delete.

Basis of Discussion No. 14.

Substitute for the existing text :

" In order that an island may have its own territorial waters, it is necessary that it should be permanently above the level of the high tide and be capable, in its natural state, of effective occupation and use."

Basis of Discussion No. 15.

After the word " strait " in the third line, insert the following words :

" So far as they do not exceed twice the breadth of territorial waters."

Basis of Discussion No. 18.

Delete the reference to " roadsteads ".

AMENDMENT TO BASIS OF DISCUSSION NO. 11, CIRCULATED TO THE MEMBERS OF THE COMMITTEE ON MARCH 31ST, 1930, IN SUBSTITUTION FOR THE PROPOSAL TO SUPPRESS THAT BASIS MADE ON MARCH 25TH, 1930.

Substitute for Basis of Discussion No. 11 the following provision :

" Roadsteads which serve for the loading, unloading and anchoring of ships, and of which the limits have been fixed for this purpose, are included in the territorial waters of the coastal State, notwithstanding that they may in part lie without the general belt of territorial waters. It rests with the coastal State to indicate what roadsteads are in fact so employed and what are the boundaries of such roadsteads."

Iceland.

DRAFT RESOLUTION AND COMMENTARY, CIRCULATED TO THE MEMBERS OF THE COMMITTEE ON MARCH 31ST, 1930.

The Conference calls attention to the desirability of the States interested giving sympathetic consideration to a request from a coastal State to assist or participate in scientific researches regarding the supply of fish in the sea and the means of protecting fry in certain local areas of the sea, and, further, to the desirability of their effectively carrying out any proposals resulting from such researches and designed to ensure the international regulation of fishing or restrictions on the use of certain fishing appliances in the areas concerned.

Reasons for the Proposed Observations.

In the last thirty years, the use of dredging fishing tackle — especially the trawl — has increased very much in some places ; for example, on the fishing grounds in the sea round the coasts of Iceland. In the opinions of many persons, the use of such appliances has a peculiarly injurious effect, not only within the limits of the territory where its use is forbidden by several or most States, but also in certain areas outside these limits, especially where the fry lives. The view is taken that the fry is destroyed in enormous quantities, and also that the conditions of existence of the fry are adversely affected or ruined in those

areas by the continual dredging. Without giving a yield worth mentioning to the fishing vessels, the stock of fish in the sea is liable to be much reduced on other neighbouring fishing grounds owing to the same cause.

It is of increasing importance to examine, on an entirely scientific basis, the general questions of the effects of fishing with dredging tackle in the said areas on the reduction in the supply of fish and on the future possibilities of improving fishing. Those researches have already been started, *inter alia*, on some grounds in the sea around Iceland, where the fishing is more international than in many other places, and they might give results within a period of some years.

As this question is of international interest and as it might be a subject for consideration whether the rules for controlling fisheries in territorial waters could not be extended to certain areas outside these limits, the Icelandic delegation thinks it reasonable that the Conference should make a recommendation as proposed above, in connection with the international legal rules for territorial waters.

Japan.

AMENDMENTS TO BASES OF DISCUSSION NOS. 4, 5, 8, 9, 11, 13, 14, AND 15, CIRCULATED TO THE MEMBERS OF THE COMMITTEE ON MARCH 18TH, 1930.

Basis of Discussion No. 4.

Omit the whole article.

Basis of Discussion No. 5.

Omit the whole article.

Basis of Discussion No. 8.

Insert after the words " if by usage " the following words " consecrated by time and universally recognised ".

Basis of Discussion No. 9.

Add the following sentence at the end of the article :

" If the width of the opening does not exceed twice the breadth of territorial waters, the territorial waters of each coastal State shall, in principle, extend as far as the median line."

Basis of Discussion No. 11.

Substitute for the article the following :

" In front of roadsteads which serve for the loading and unloading of ships, territorial waters are measured in accordance with the general rule laid down in No. 6."

Basis of Discussion No. 13.

1. Delete the first sentence of the first paragraph from the words " twice the breadth of territorial waters " to the end, and substitute the words " ten miles ", and add immediately afterwards the following sentence : " The whole group shall be regarded as a single unit ".

2. Omit the second sentence of the first paragraph.

3. In the second paragraph, substitute for the words " twice the breadth of territorial waters ", the words " ten miles ".

The article as revised will read as follows :

" In the case of a group of islands which belong to a single State and at the circumference of the group are not separated from one another by more than *ten miles*, *the whole group shall be regarded as a single unit.* The same rule shall apply as regards islands which lie at a distance from the mainland not greater than *ten miles.*"

Basis of Discussion No. 14.

Substitute for the whole article the following :

" In order that an island may serve as a base-line for fixing the breadth of territorial waters, it is sufficient for it to be above water at low tide."

Basis of Discussion No. 15.

Substitute for the words " twice the breadth of territorial waters " the words " ten miles ".

AMENDMENT TO BASIS OF DISCUSSION NO. 27, CIRCULATED TO THE MEMBERS OF THE COMMITTEE ON MARCH 26TH, 1930.

Substitute the following for the whole article :

" Foreign merchant ships are, in principle, within the jurisdiction of the coastal State when they are in one of its ports. That jurisdiction may not be exercised, however, in regard to matters of discipline on board or disputes that may arise between the captain, officers and crew except :

" (1) When a subject or citizen of the coastal State or a person other than a member of the crew is concerned, or

" (2) In the case of disorders of a nature likely to disturb the peace and public order of the coastal State, or

" (3) Where the assistance of the local authorities is requested by the captain of the ship or by the consular official of the State whose flag the ship flies."

AMENDMENT TO BASIS OF DISCUSSION NO. 18, CIRCULATED TO THE MEMBERS OF THE COMMITTEE ON MARCH 27TH, 1930.

1. In paragraph 1, omit the words " ports and roadsteads ".

This paragraph will read as follows :

" The base-line from which the belt of territorial waters is measured in front of bays forms the line of demarcation between inland and territorial waters."

2. Add the following as a second paragraph :

" In front of ports and roadsteads the line of demarcation between territorial and inland waters, which in this case are included in the area of the port or roadstead, shall be determined by the law of the coastal State. In no case, however, may the breadth thus determined exceed the limit of the territorial waters as measured from the line indicated in Nos. 10 and 11."

Latvia.

AMENDMENT TO BASIS OF DISCUSSION NO. 7, CIRCULATED TO THE MEMBERS OF THE COMMITTEE ON APRIL 2ND, 1930.

Omit the words " ten miles " and insert in their place " twice the breadth of the territorial waters ".

Add at the end the following new paragraph :

" If the breadth of the bay measured between the middle of the above-mentioned line and the most distant point of the coast of the bay is more than, or equal to, one-quarter of the breadth of the territorial waters, the whole area between this line and the coast of the bay shall be deemed to be inland waters."

Norway.

AMENDMENT TO BASIS OF DISCUSSION NO. 1, CIRCULATED TO THE MEMBERS OF THE COMMITTEE ON MARCH 17TH, 1930.

The sovereingty of the coastal State extends over a belt of sea as defined in Articles . . . and specified in this Convention as its territorial waters. Such sovereignty is exercised according to the rules laid down in the present Convention, or, where no such rules exist, in accordance with the rules of international law.

Norway and Sweden.

JOINT PROPOSAL FOR AMENDMENTS TO BASES OF DISCUSSION NOS. 3, 4, 6, 7 AND 8, CIRCULATED TO THE MEMBERS OF THE COMMITTEE ON MARCH 17TH, 1930.

Bases of Discussion Nos. 3 and 4 combined.

The High Contracting Parties recognise reciprocally, as fixing the breadth of their territorial waters, the limits laid down in the list attached to this Convention. Apart from the provisions contained in Articles . . . (Bases of Discussion Nos. 5, etc.), they will not recognise any extension of the above-mentioned limits.

Bases of Discussion Nos. 6, 7 and 8 combined.

The breadth of territorial waters shall be measured from straight lines drawn along the coast from one landmark to another. Any part of the territory may be used as a landmark, including islands, islets and rocks left exposed at the ordinary level of the lowest tides. As regards bays and coastal archipelagos in particular, these straight lines shall be drawn across the opening either of bays or of intervals of sea from the outward side of the archipelago. Each State shall fix the said base-lines for its coasts. It may not, however, make these base-lines longer than is justified by the rules generally admitted either as being an international usage in a given region or as principles consecrated by the practice of the State concerned and corresponding to the needs of that State or the interested population and to the special configuration of the coasts or the bed of the sea covered by the coastal waters.

Marine charts, intended for vessels navigating off the coasts and showing the external limit of the territorial waters, shall be placed at the disposal of the public in each country.

Poland.

AMENDMENTS TO BASES OF DISCUSSION NOS. 1, 4, 27 AND 28, CIRCULATED TO THE MEMBERS OF THE COMMITTEE ON MARCH 17TH, 1930.

Basis of Discussion No. 1.

As the term " sovereignty " used in Basis of Discussion No. 1 is indefinite in meaning and liable to be interpreted in different ways, and as, moreover, even in the present Bases of Discussion, it is used in connection with different legal situations ;

Lastly, in view of the differences of opinion that exist in the doctrine on the subject ;

The Polish delegation proposes that, in Basis of Discussion No. 1 and elsewhere, the term " rights of jurisdiction " or a similar term should be substituted for the term " sovereignty ".

Basis of Discussion No. 4.

If no unanimous agreement is reached as to the breadth of territorial waters, the Polish delegation proposes that a second paragraph worded as follows should be added to Basis of Discussion No. 4 :

> " The coastal States of a clearly defined maritime region will have the option of fixing by joint agreement the breadth of their territorial waters, which breadth will in such circumstances be recognised and respected as of right by the other contracting parties."

Bases of Discussion Nos. 27 and 28.

Whereas the proposed Convention must relate exclusively to the legal regime of territorial waters in the strict sense of the term ;

As the question of the international regime of maritime ports is the subject of the Convention and State signed at Geneva on December 9th, 1923 ;

As it is essential for the success of the Committee's work that the field of law to be codified should be limited as far as possible ;

The Polish delegation proposes that Bases of Discussion Nos. 27 and 28, which deal with the conditions applicable to foreign ships in ports, should be omitted altogether.

PROPOSED ADDITIONAL ARTICLE, CIRCULATED TO THE MEMBERS OF THE COMMITTEE ON MARCH 28TH, 1930.

1. In the absence of a direct agreement between the High Contracting Parties, and subject to the international obligations existing between them, all disputes which may arise between them on points of fact in regard to the application of the rules of the present Convention shall be submitted for investigation and conciliation to the Advisory and Technical Committee for Communications and Transit, established by the Convention signed at Barcelona on April 20th, 1921.

2. All legal disputes which may arise between the High Contracting Parties in regard to the interpretation or application of the present Convention shall be submitted for judgment to the Permanent Court of International Justice.

Portugal.

AMENDMENT TO BASIS OF DISCUSSION NO. 3, CIRCULATED TO THE MEMBERS OF THE COMMITTEE ON MARCH 18TH, 1930.

The Portuguese delegation proposes that the breadth of territorial waters should be twelve nautical miles for all States and for all purposes.

AMENDMENT TO BASIS OF DISCUSSION NO. 19, CIRCULATED TO THE MEMBERS OF THE COMMITTEE ON MARCH 21ST, 1930.

Replace the words " foreign merchant ships " by " foreign ships other than warships ".

After paragraph 1, insert the following provision :

" Vessels contravening these regulations shall be amenable to the jurisdiction of that State."

Replace the last paragraph by the following :

" The right of passage comprises the right of anchoring only in so far as is strictly necessary for purposes of navigation."

Add the following provisions :

" In this case, the vessel is subject to the same regime of judicial and legislative jurisdiction as if it were merely passing through.

" Should the vessel continue to anchor for a period longer than that which is strictly necessary, the coastal State may claim judicial and legislative jurisdiction as if the vessel were within a port of that State."

AMENDMENT TO BASIS OF DISCUSSION NO. 20, CIRCULATED TO THE MEMBERS OF THE COMMITTEE ON MARCH 24TH, 1930.

Add the following paragraph :

" Within the meaning of the present Convention the term 'warships' comprises all vessels incorporated, even temporarily, in the naval forces of the State."

AMENDMENT TO BASIS OF DISCUSSION NO. 22, CIRCULATED TO THE MEMBERS OF THE COMMITTEE ON MARCH 25TH, 1930.

The Portuguese delegation proposes that *Basis of Discussion No. 22* should be replaced by the following :

" Foreign vessels passing through territorial waters are not, owing to this fact alone, subject, in civil and commercial matters, to the legislative and judicial jurisdiction of the coastal State.

" In the case of crimes or offences committed on foreign vessels other than warships and vessels belonging to a foreign Government, employed on non-commercial Government service, the coastal State may only exercise legislative and judicial jurisdiction when :

" (1) The crime or offence in respect of which such arrest is to be made was committed on board the ship within the national or territorial waters of the coastal State, and,

" *(a)* The consequences of the crime or offence extend beyond the ship, or

" *(b)* The crime or offence is, in the opinion of the competent local authority, of a nature to disturb the peace of the country or the maintenance of order in the territorial waters, or

" *(c)* The assistance of the local authorities has been requested by the person in charge of the ship, or the consul of the State whose flag it flies.

" (2) (As in the proposal of the British delegation)."

AMENDMENT TO BASIS OF DISCUSSION NO. 8, CIRCULATED TO THE MEMBERS OF THE COMMITTEE ON MARCH 27TH, 1930.

Add to *Basis of Discussion No. 8* the following :

" . . . or if it is recognised as being absolutely necessary for the State in question to guarantee its defence and neutrality and to ensure the navigation and maritime police services."

AMENDMENT TO BASIS OF DISCUSSION NO. 13, CIRCULATED TO THE MEMBERS OF THE COMMITTEE ON MARCH 31ST, 1930.

The Portuguese delegation proposes to replace *Basis of Discussion No. 13* by the following :

" In the case of an archipelago, the islands forming the archipelago shall be deemed to be a unit and the breadth of the territorial sea shall be measured from the islands most distant from the centre of the archipelago."

AMENDMENT TO BASIS OF DISCUSSION NO. 5, CIRCULATED TO THE MEMBERS OF THE COMMITTEE ON APRIL 3RD, 1930.

The Portuguese delegation proposes to add to the schedule given in *Basis of Discussion No. 5* the expression : " or for the protection or the supervision of fisheries."

The Portuguese delegation also proposes that the following paragraph should be added to *Basis of Discussion No. 5* :

" A coastal State has jurisdiction within this contiguous belt to deal with offences against the laws and regulations on these subjects."

Roumania.

AMENDMENT TO BASIS OF DISCUSSION NO. 19, CIRCULATED TO THE MEMBERS OF THE COMMITTEE ON MARCH 19TH, 1930.

Add the following paragraph at the end of the article :

" In this case (or in the case of prolonged anchoring) the ship is subject to the regime applicable to vessels in foreign ports."

AMENDMENT TO BASIS OF DISCUSSION NO. 19, CIRCULATED TO THE MEMBERS OF THE COMMITTEE ON MARCH 21ST, 1930.

Modify the first part of *Basis of Discussion No. 19* to read as follows :

" A coastal State is bound to allow foreign merchant ships *and foreign aircraft* a right of innocent passage through and over its territorial waters."

AMENDMENT TO BASIS OF DISCUSSION NO. 25, CIRCULATED TO THE MEMBERS OF THE COMMITTEE ON MARCH 25TH, 1930.

Add at the end of the first paragraph the words " even in case of anchoring in distress ".

Spain.

AMENDMENTS TO BASES OF DISCUSSION NOS. 1, 2, 19, 20, 21, 25, 27 AND 28, CIRCULATED TO THE MEMBERS OF THE COMMITTEE ON MARCH 24TH, 1930.

Basis of Discussion No. 1 to be worded as follows :

" The coastal State possesses, over a belt of sea around its coasts and over the sea-bed and subsoil under, and the air above the said belt, full and comprehensive rights of sovereignty and the same powers as those exercised by the State in its own territory. These rights will be exercised with the limitations imposed by the present Convention, by treaties and by universally accepted international customary law.

" The line separating this belt, which is called the territorial or marginal sea, from the high sea constitutes the maritime frontier of each State."

Basis of Discussion No. 2 to be omitted.

Basis of Discussion No. 19 to be worded as follows :

" The coastal State shall, without discrimination as regards flags, allow all vessels other than warships, including submarines navigating on the surface, a right of innocent passage through its territorial waters.

" The term ' innocent passage ' shall be taken to mean passage which does not prejudicially affect the exercise of any of the powers which the coastal State may possess under Basis of Discussion No. 1.

" It shall in no case cover the passage of a vessel using territorial waters for any purpose prejudicial to the security, public order, or revenue of the coastal State.

" The right of innocent passage, which may be exercised by any vessel not proceeding to a port of the coastal State, shall comprise :

" (1) The transport of persons, postal matter, and goods ;

" (2) Entry into and departure from territorial waters ;

" (3) Passage in transit through such waters ;

" (4) The right of anchorage and other similar rights, in so far as is necessary for ordinary navigation operations.

" Vessels shall not be allowed to make a stay or to lie at anchor except in the case of shipwreck, accident, or *vis major*.

" The right of passage shall be subject to such laws and regulations as the coastal State may issue in the exercise of the powers which it may hold under Basis of Discussion No. 1.

" Subject to any special provisions of international treaties, the coastal State may not issue laws or regulations, or apply any laws or regulations issued, in such a way as to discriminate between its own and foreign vessels or between the vessels of one State and those of another.

" Derogations from the right of innocent passage shall be permissible only for reasons of public safety and in the case of emergencies affecting the safety of the State or the vital interests of the country."

Basis of Discussion No. 20 to be worded as follows :

" The entry into, transit through, departure from and anchoring in territorial waters of warships as a result of damage or of distress shall continue to be governed by international custom and practice, subject to the conditions and reservations sanctioned by use. "

Basis of Discussion No. 21 to be omitted.

The Spanish delegation agrees with the French delegation's proposal regarding the drafting of *Basis of Discussion No. 25* and the proposal of the delegation of the United States of America with regard to the omission of *Bases of Discussion Nos. 27 and 28.*

AMENDMENTS TO BASES OF DISCUSSION NOS. 3, 4, 6, 7 AND 8, 5, 22, 23 AND 24, CIRCULATED TO THE MEMBERS OF THE COMMITTEE ON MARCH 25TH, 1930.

Bases of Discussion Nos. 3, 4, 6, 7 and 8.

These Bases should be combined in accordance with the proposal made by the Norwegian and Swedish delegations and accepted in principle by the Spanish delegation, subject to fixing the breadth of territorial waters, for the purposes of Bases of Discussion Nos. 6, 7 and 8 " *at six nautical miles from the most outlying points of the coasts or from the shallow water of the coastal State* ".

Basis of Discussion No. 5.

Basis of Discussion No. 5 should be drafted as follows :

" On the high seas, adjacent to its territorial waters, the coastal State may exercise the control necessary to prevent, within its territory or territorial waters, the infringement of its Customs or public health regulations, or regulations for the protection of its industries, or interference with its security by foreign ships.

" Such control may not be exercised at a distance from the coast greater than that which can be covered by the suspected ship in an hour's steaming."

Basis of Discussion No. 22.

Basis of Discussion No. 22 should be drafted as follows :

" Subject to the rights of the coastal State defined in the last paragraph of Basis of Discussion No. 19, criminal jurisdiction should in general not be exercised in regard to offences committed on a foreign merchant ship passing through territorial waters, except in the following cases . . . "

Basis of Discussion No. 23.

Basis of Discussion No. 23 should be drafted as follows :

" A person whose arrest is sought *by the authorities* of the coastal State may be arrested on board a foreign merchant ship within the territorial waters of the State."

Basis of Discussion No. 24.

Basis of Discussion No. 24 should be omitted.

Sweden.

AMENDMENT TO BASIS OF DISCUSSION NO. 19, CIRCULATED TO THE MEMBERS OF THE COMMITTEE ON MARCH 24TH, 1930.

Introduce after the third paragraph, the following provision :

" The right of passage also applies to inland waters between the coast and islands situated off the coast if such waters are ordinarily used for navigation between countries other than the coastal State."

AMENDMENT TO BASIS OF DISCUSSION NO. 16, CIRCULATED TO THE MEMBERS OF THE COMMITTEE ON MARCH 28TH, 1930.

When two States border on a strait which is not wider than twice the breadth of territorial waters, the territorial waters of each coastal State extend up to a line running down the centre of the strait ; if the strait is wider, the breadth of the territorial waters of each coastal State is measured in accordance with the ordinary rule.

When States are already parties to a Convention, these rules shall not modify the limits of the territorial waters as resulting from the Convention.

(See under Norway and Sweden for joint proposal of the Norwegian-Swedish delegations regarding Bases of Discussion Nos. 3 and 4, 6, 7 and 8).

United States of America.

AMENDMENTS TO BASES OF DISCUSSION NOS. 1, 3 AND 4, CIRCULATED TO THE MEMBERS OF THE COMMITTEE ON MARCH 18TH, 1930.

Basis of Discussion No. 1.

The expression " territorial waters " presents in the English text some difficulties for the United States, in view of the fact that under American laws and regulations the expression " territorial waters of the United States " includes other waters than those of the marginal sea, for example, ports, harbours, bays and other enclosed arms of the sea, as well as boundary waters. However, if it is desired to use the expression " territorial waters ", it might be sufficient if this was accompanied with the proper definition specifically stating the meaning of the term for the purposes of this Convention only, but it would be more precise if the " belt of sea " were termed " marginal sea ".

Basis of Discussion No. 3.

Add : For the purposes of this Convention, a nautical mile is defined as the equivalent of 1,852 metres.

Basis of Discussion No. 4.

Omit.

AMENDMENTS TO BASES OF DISCUSSION NOS. 5 AND 6, CIRCULATED TO THE MEMBERS OF THE COMMITTEE ON MARCH 19TH, 1930.

Basis of Discussion No. 5.

Each coastal State may make reasonable regulations for the exercise on the high seas adjacent to its territorial waters of the control necessary to prevent within its territory or territorial waters the infringement of its Customs, navigation, sanitary or police laws. Any such regulations shall be communicated to other States.

Basis of Discussion No. 6.

Except as otherwise provided in this Convention, the seaward limit of the territorial waters is the envelope of all arcs of circles having a radius of three nautical miles drawn from all points on the coast (at whatever line of sea level is adopted in the charts of the coastal State) or from the seaward limit of those inland waters which are contiguous with the territorial waters.

AMENDMENTS TO BASES OF DISCUSSION NOS. 19, 20, 22, 23 AND 24, CIRCULATED TO THE MEMBERS OF THE COMMITTEE ON MARCH 19TH, 1930.

Basis of Discussion No. 19.

Subject to the rights of the coastal State to the use of the territoral waters or the subsoil for its national purposes, a coastal State is bound to allow foreign ships, other than warships, a right of innocent passage through its territorial waters ; any police or navigation regulations with which such ships may be required to comply must be applied in such a manner as to respect the right of passage and without discrimination.

Omit the second paragraph.

Omit the third paragraph.

Basis of Discussion No. 20.

A coastal State should ordinarily, as a matter of comity, permit innocent passage through its territorial waters of foreign warships, including submarines navigating on the surface only and not submerged or half awash.

A coastal State is entitled to make rules regulating the conditions of such passage.

A coastal State is entitled to make rules governing the anchoring of foreign warships in its territorial waters, but it may not forbid anchoring in case of damage to the ship or of distress.

Basis of Discussion No. 22.

The criminal jurisdiction of the coastal State should, generally, not be exercised, etc.

Basis of Discussion No. 23.

A person whose arrest is sought by the judicial authorities of the coastal State in the exercise of its criminal jurisdiction may be arrested on board a foreign yacht or merchant ship within the territorial waters of the State.

Basis of Discussion No. 24.

Reserved.

AMENDMENTS TO BASES OF DISCUSSION NOS. 19, 20, 22, 23 AND 24 ; REVISED TEXT CIRCULATED TO THE MEMBERS OF THE COMMITTEE ON MARCH 22ND, 1930.

Basis of Discussion No. 19.

Subject to the rights of the coastal State to the use of the territorial waters or the subsoil for its national purposes, a coastal State is bound to allow foreign ships, other than warships, a right of innocent passage through its territorial waters ; any police or navigation regulations with which such ships may be required to comply must be applied in such a manner as to respect the right of passage and without discrimination.

Omit the second paragraph.

Omit the third paragraph.

Basis of Discussion No. 20.

A coastal State will ordinarily permit innocent passage through its territorial waters of foreign warships, including submarines navigating on the surface only and not submerged or half awash.

A coastal State is entitled to make rules regulating the conditions of such passage.

A coastal State is entitled to make rules governing the anchoring of foreign warships in its territorial waters, but it may not forbid anchoring in case of damage to the ship or of distress.

Basis of Discussion No. 22.

The criminal jurisdiction of the coastal State should, generally, not be exercised, etc.

Basis of Discussion No. 23.

A person whose arrest is sought by the judicial authorities of the coastal State in the exercise of its criminal jurisdiction may be arrested on board a foreign yacht or merchant ship within the territorial waters of the State.

Basis of Discussion No. 24.

Reserved.

AMENDMENT TO BASIS OF DISCUSSION NO. 1, CIRCULATED TO THE MEMBERS OF THE COMMITTEE ON MARCH 19TH, 1930.

The territory of the coastal State includes a belt of sea as defined in Articles . . . and specified in this Convention as its territorial waters. The exercise of sovereingty therein is subject to the rules laid down in the present Convention, or where no such rules exist, to the rules of international law.

AMENDMENTS TO BASES OF DISCUSSION NOS. 27 AND 28, CIRCULATED TO THE MEMBERS OF THE COMMITTEE ON MARCH 20TH, 1930.

The delegation of the United States of America suggests that Bases of Discussion 27 and 28 should be omitted as being not within the purview of a Convention regarding territorial waters.

If the Committee decides that the subject of foreign ships in ports should be treated, the delegation of the United States reserves the right to offer amendments to the Bases of Discussion in question.

AMENDMENT TO BASIS OF DISCUSSION NO. 2, CIRCULATED TO THE MEMBERS OF THE COMMITTEE ON MARCH 20TH, 1930.

The territory of the coastal Sate includes the air above the territorial waters, the bed of the sea covered by those waters and the subsoil.

PROPOSED ADDITIONAL ARTICLES, CIRCULATED TO THE MEMBERS OF THE COMMITTEE ON MARCH 25TH, 1930.

(a) Nothing herein contained shall limit or affect any treaty or agreement now in force, to which any party hereto is a party.

(b) Nothing herein contained shall limit the right of particular States to make agreements *inter se* regarding their territorial waters.

(c) Waters, whether called bays, sounds, straits or by some other name, which have been under the jurisdiction of the coastal State as part of its interior waters, are deemed to continue a part thereof.

Charts indicating the line drawn in such cases shall be communicated to the other parties hereto.

(d) This Convention shall be subject to revision at the request of any party hereto, after ten years from the date of its going into force. If, within two years after such request, such revision shall not be had, or if had, shall not be acceptable to any party hereto, such party may thereupon withdraw from this Convention upon one year's notice to the other parties.

(e) It is recognised that the provisions of this Convention are, in general, not applicable to coasts which are ordinarily or constantly ice-bound.

AMENDMENTS TO BASES OF DISCUSSION NOS. 3 AND 6, 7, 8, 9 AND 18, 12, 13 AND 14, 10, 11, 15, 16, 17, AND PROPOSALS FOR THREE NEW BASES OF DISCUSSION CIRCULATED TO THE MEMBERS OF THE COMMITTEE ON MARCH 27TH, 1930.

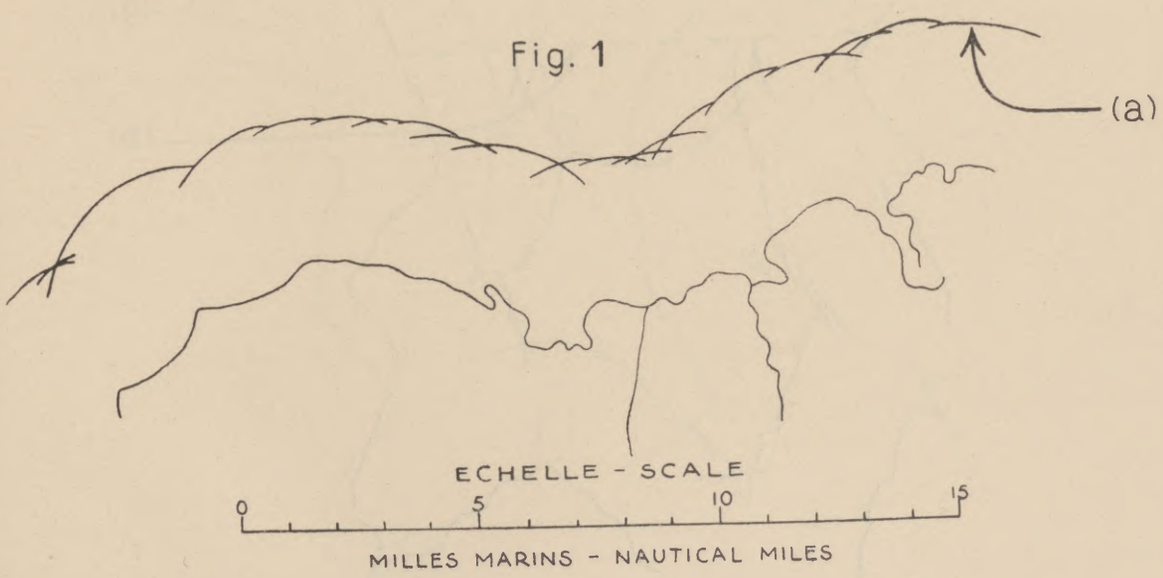
These Bases are submitted in the interest of finding a set of formulæ for the delimitation of territorial waters which shall be simple in application and definite in result. This is believed to be the first attempt to formulate a comprehensive and systematic body of rules for this purpose, and it is suggested that they be studied objectively, so far as practicable, on charts and maps. Two pages of diagrams are attached to illustrate the text.

A. General Principle.

Bases of Discussion Nos. 3 and 6.

Except as otherwise provided in this Convention, the seaward limit of the territorial waters is the envelope of all arcs of circles having a radius of three nautical miles drawn from all points on the coast (at whatever line of sea level is adopted in the charts of the coastal State), or from the seaward limit of those interior waters which are contiguous with the territorial waters (see Fig. 1).

(a) *Limite des eaux territoriales*
Limit of the territorial waters



B. Bays and Estuaries.

Bases of Discussion Nos. 7, 8, 9 and 18.

I. Subject to the provisions of Article . . . with reference to bays and other bodies of water which have been under the jurisdiction of the coastal State, in the case

of a bay or estuary the coasts of which belong to a single State, or to two or more States which have agreed upon a division of the waters thereof, the determination of the status of the waters of the bay or estuary, as interior waters or high sea, shall be made in the following manner :

1. On a chart or map a straight line not to exceed ten nautical miles in length shall be drawn across the bay or estuary as follows : The line shall be drawn between two headlands or pronounced convexities of the coast which embrace the pronounced indentation or concavity comprising the bay or estuary if the distance between the two headlands does not exceed ten nautical miles; otherwise, the line shall be drawn through the point nearest to the entrance at which the width does not exceed ten nautical miles ;

2. The envelope of all arcs of circles having a radius equal to one-fourth the length of the straight line across the bay or estuary shall then be drawn from all points on the coast of the mainland (at whatever line of sea level is adopted in the charts of the coastal State) but such arcs of circles shall not be drawn around islands in connection with the process which is next described ;

3. If the area enclosed within the straight line and the envelope of the arcs of circles exceeds the area of a semi-circle whose diameter is equal to one-half the length of the straight line across the bay or estuary, the waters of the bay or estuary inside of the straight line shall be regarded, for the purposes of this Convention, as interior waters ; otherwise they shall not be so regarded.

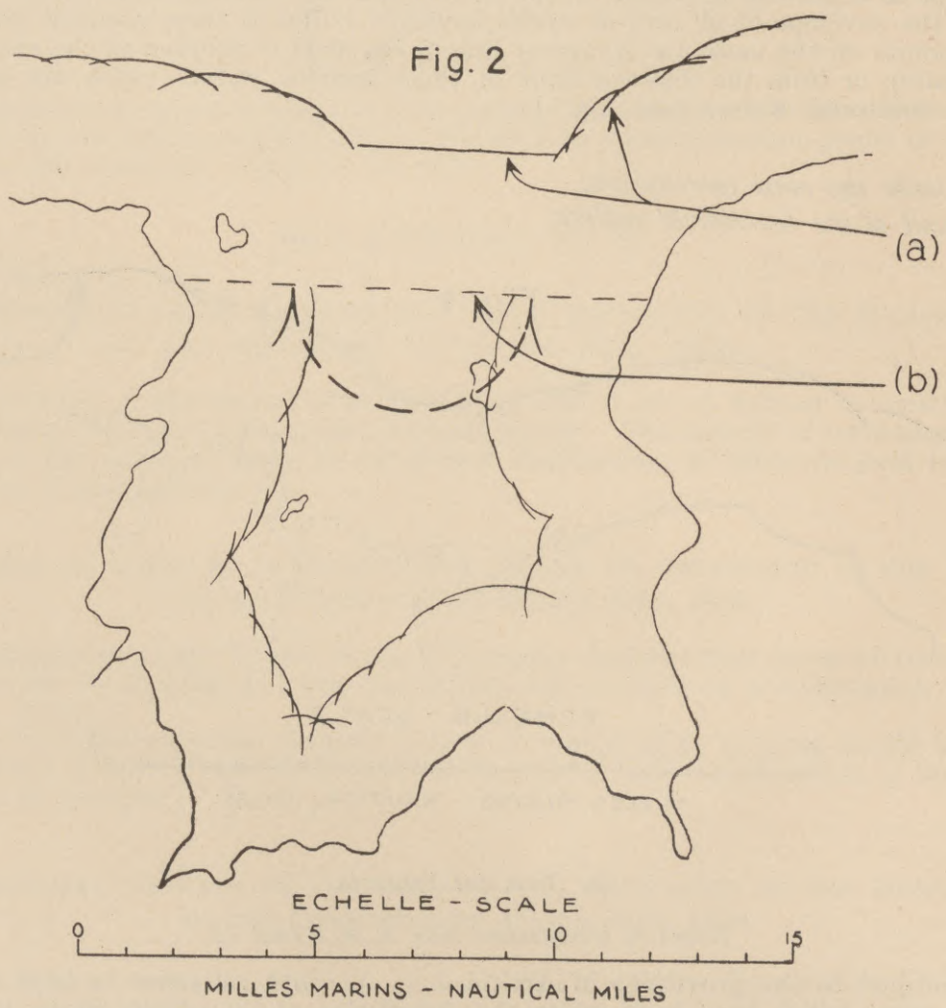
When the determination of the status of the waters of a bay or estuary has been made in the manner described above, the delimitation of the territorial waters shall be made as follows :

1. If the waters of the bay or estuary are found to be interior waters, the straight line across the entrance or across the bay or estuary shall be regarded as the boundary between interior waters and territorial waters, and the three-mile belt of territorial waters shall be measured outward from that line in the same manner as if it were a portion of the coast (see Fig. 2) ;

(a) *Limite des eaux territoriales*
Limit of the territorial waters

(b) *Limite des eaux intérieures*
Limit of the interior waters

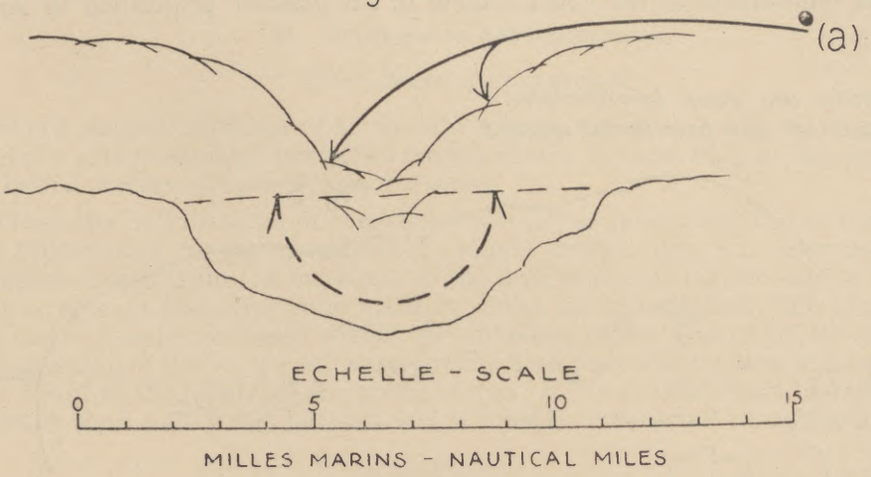
Fig. 2



2. Otherwise the belt of territorial waters shall be measured outward from all points on the coast line (see Fig. 3);

(a) *Limite des eaux territoriales.*
Limit of the territorial waters

Fig. 3

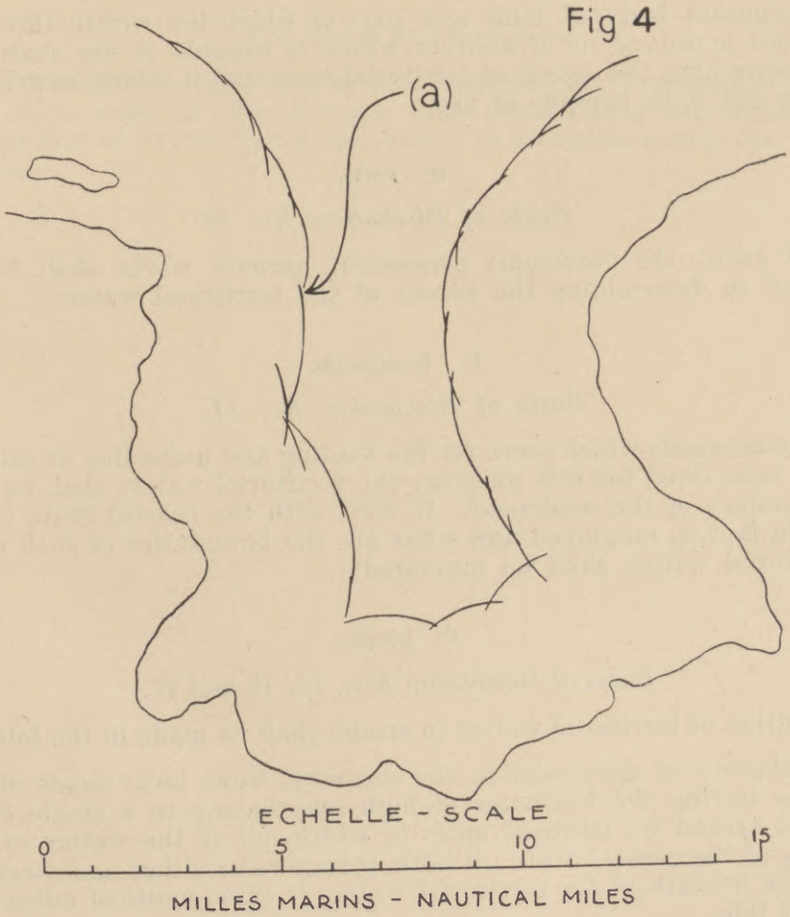


3. In either case, arcs of circles of three-mile radius shall be drawn around the coasts of islands (if there be any) in accordance with provisions for delimiting territorial waters around islands as prescribed in Article . . .

II. In the case of a bay or estuary the coasts of which belong to two or more States, unless the coastal States have agreed upon a division of the waters thereof the seaward limits of the territorial waters of each coastal State shall be the envelope of the arcs of circles having a radius of three nautical miles from all points on the coast, including islands (see Fig. 4).

(a) *Limite des eaux territoriales*
Limit of the territorial waters

Fig 4

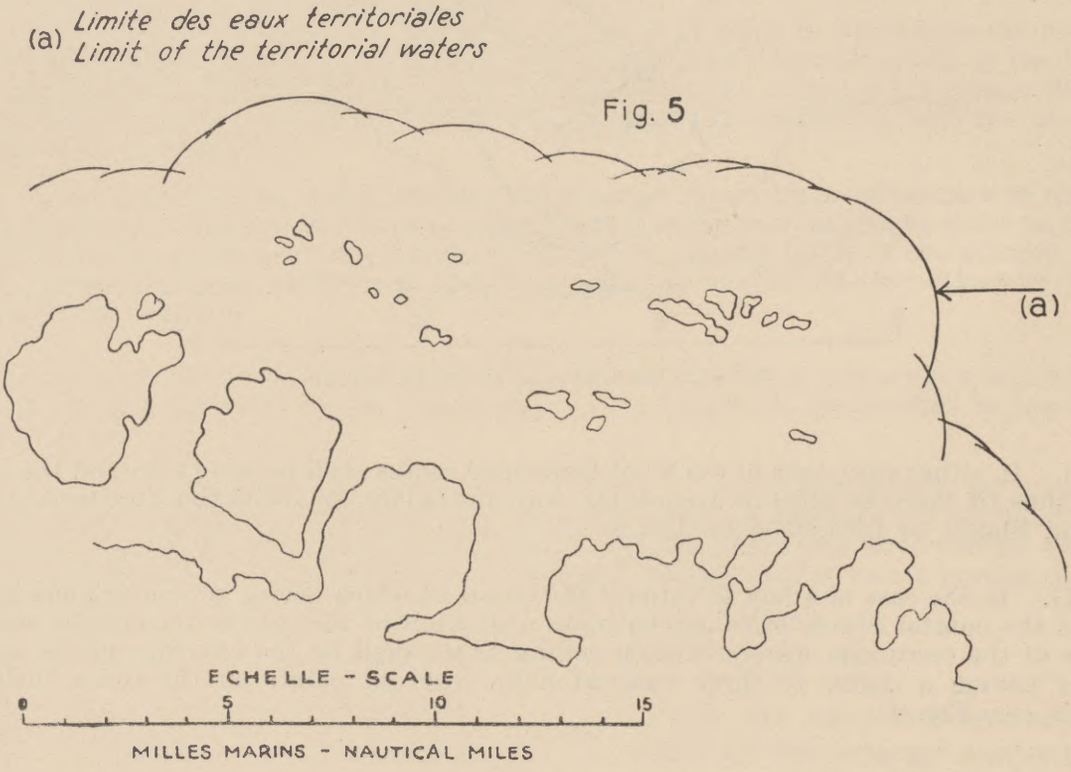


C. Islands.

Bases of Discussion Nos. 12, 13 and 14.

The delimitation of territorial waters in the vicinity of islands shall be made in the following manner :

1. Each island (subject to the definitions of an island which are contained in the following paragraphs) is enveloped by its own belt of territorial waters, measured three nautical miles outward from the coast thereof in the manner prescribed in Article . . . (see Fig. 5).



2. Each separate body of land which is capable of use shall be regarded as an island in determining the extent of territorial waters.

3. Each separate body of land any part of which lies within three nautical miles of the continental mainland or of another which is capable of use shall be regarded as an island, in determining the extent of territorial waters, if it stands above the level of low tide, whether or not it be capable of use.

D. Ports.

Basis of Discussion No. 10.

In front of ports, the outermost permanent harbour works shall be regarded as a part of the coast in determining the extent of the territorial waters.

E. Roadsteads.

Basis of Discussion No. 11.

In front of roadsteads which serve for the loading and unloading of ships and of which the limits have been fixed for this purpose, the territorial waters shall be measured from the exterior boundary of the roadstead. It rests with the coastal State to indicate what roadsteads are in fact so employed and what are the boundaries of such roadsteads from which the territorial waters shall be measured.

F. Straits.

Bases of Discussion Nos. 15, 16 and 17.

The delimitation of territorial waters in straits shall be made in the following manner :

1. In the absence of agreement to the contrary, when both coasts of a strait which connect two seas having the character of high seas belong to a single State, and both entrances do not exceed six nautical miles in width, all of the waters of the strait are territorial waters of the coastal State ; if both entrances or either one exceeds six nautical miles in width the breadth of the territorial waters is three nautical miles measured from each coast at low tide.

2. In the absence of agreement to the contrary, when two or more States border upon a strait, the territorial waters of each State extend to the middle of the strait in those parts where the width does not exceed six nautical miles ; where the strait exceeds six nautical miles in width, the breadth of the territorial waters is three nautical miles, measured from each coast at low tide.

3. In the absence of agreement to the contrary, where a strait is merely a channel of communication with an inland sea, the rules regarding bays apply to such strait.

G. Simplification and Assimilation.

New Basis of Discussion.

1. Where the delimitation of territorial waters would result in leaving a small area of high sea totally surrounded by territorial waters of one or more States, the area is assimilated to the territorial waters of such State or States.

2. Where the delimitation of territorial waters, as prescribed in the foregoing articles, results in a pronounced concavity such that a single straight line, not more than four nautical miles in length, drawn from the envelope of the arcs of circles on one side to the envelope of the arcs of circles on the other side entirely closes an indentation, the coastal State may regard the body of water enclosed within the envelope of the arcs of circles and said straight line as an extension of its territorial waters if the area exceeds the area of a semi-circle whose diameter is equal to the length of the straight line ; if the coastal State chooses to assimilate these waters it shall notify the nations which may be interested therein.

H. Length of a Nautical Mile.

New Basis of Discussion.

For the purposes of this Convention, a nautical mile is defined as the equivalent of 1,852 meters.

I. "Low Water" and "Low Tide"

New Basis of Discussion.

The terms " low water " and " low tide ", as used in this Convention, mean the low water base-line which is employed by the coastal State for the particular coast, whether it be the line of mean low water, the line of lower low water, the line of mean low-water spring-tides, or some other similar line of reference.

J. Indicating Limits of Territorial Waters on Charts.

New Basis of Discussion.

It is recommended that each coastal State indicate, on its published charts which are of sufficiently large scale for the purpose, lines representing the seaward limits of its territorial waters and of its interior waters drawn in accordance with the provisions of the preceding articles.

ANNEX III.

DRAFT REPORT, CIRCULATED TO THE MEMBERS OF THE COMMITTEE ON APRIL 3rd, 1930, (WORK OF THE FIRST SUB-COMMITTEE.)

GENERAL PROVISIONS.

Article 1.

The territory of a State includes a belt of sea described in this Convention as the territorial sea.

Sovereignty over this belt is exercised subject to the conditions fixed by the present Convention and the other rules of international law.

Observations.

The idea which it has been sought to express in laying down that the belt of territorial sea forms part of the territory of the State is that the power exercised by the State over this belt does not, in principle, differ from the power which the State exercises over its terrestrial domain. This is also the reason why the term " sovereignty " has been retained, a term which, better than any other describes the juridical nature of this power. Obviously, sovereignty over the territorial sea, like sovereignty over the terrestrial domain, can only be exercised subject to the conditions laid down by international law. Seeing that the limitations which international law imposes on the power of the State in respect of the latter's sovereignty over the territorial sea are greater than those it imposes in respect of the terrestrial domain, express mention of these limitations in the text of the article itself has not been thought to be superfluous. These limitations are to be found first of all in the present Convention. As, however, the Convention cannot aspire to settle every point in this connection, it has been thought necessary to refer also to the other rules of international law.

There was some hesitation as to whether it would be better to say " territorial waters " or " territorial sea ". The use of the first expression, which was employed by the Preparatory Committee, may indeed be said to be more general and it is employed in several international Conventions. There can, however, be no doubt that this expression is likely to lead — indeed, it has led — to confusion, owing to the fact that it is also used to indicate inland waters, or the sum total of inland waters and " territorial " waters in the restricted sense of the term. For these reasons, the expression " territorial sea " has been accorded preference.

Article 2.

The territory of a coastal State includes also the air space above the territorial sea, together with the soil covered by that sea, and the subsoil.

Nothing in the present Convention affects the general or conventional rules of international law relating to the exercise of sovereignty in these domains.

Observations.

The suggestion was made that a formal provision should be inserted concerning the juridical status of the air above the territorial sea, the soil covered by that sea, and the subsoil. The text as drafted closely follows the previous article. It therefore follows that the coastal State also exercises sovereignty in the air space above the territorial sea, and over the soil and subsoil. It is important to emphasise the fact that in these domains also sovereignty is limited by the rules of international law. As regards the territorial sea, these limitations are established, in the first place, by the present Convention. The question of the air space would seem to be governed by the provisions of other Conventions. As regards the soil and subsoil, there exist up to the present practically no rules of international law.

RIGHT OF PASSAGE.

Article 3.

Passage means navigation through the territorial sea for the purpose either of traversing that sea without entering inland waters, or of proceeding to inland waters, or of making for the high sea from inland waters.

Passage is not *innocent* when the vessel makes use of the territorial sea of a coastal State for the purpose of doing any act prejudicial to the security, to the public policy or to the fiscal interests of that State.

The right of passage includes the right to stop or to anchor, but in so far only as the same is incidental to ordinary navigation or is rendered necessary by *force majeure* or by distress.

Observations.

For passage to be deemed other than innocent, the territorial sea must be used for the purpose of doing some act prejudicial to the security, to the public policy or to the fiscal interests of the State, quite independently of the fact that the vessel may have entered the territorial sea with the preconceived intention of doing such act, or even if the intention did not exist at the time of entry, provided the acts have been done. The expression " fiscal interests " should be given a wide interpretation ; it also covers import, export and transit prohibitions promulgated by the coastal State.

The coastal State is not therefore bound to allow passage in the cases specified in paragraph 2 of the article. It should, moreover, be noted that when a State has contracted international obligations involving freedom of transit over its territory, either as a general rule or in favour of certain States, the obligations thus assumed also apply to the traversing of the territorial sea. Similarly, as regards access to ports or navigable waterways, any facilities the State may have accorded in virtue of international obligations concerning free access to ports, or shipping on the said waterways, must be deemed to have been granted also in those portions of the territorial sea which reasonably constitute ways of approach to the said ports or navigable waterways.

1. Vessels other than Warships.

Article 4.

A coastal State may not hinder the innocent passage of foreign vessels in the territorial sea.

Submarine vessels shall navigate on the surface.

Observations.

The expression " vessels other than warships " includes not only merchant vessels, but all other vessels not registered in the navy list of a State at the time of passage.

Article 5.

The right of passage does not prevent the coastal State from taking all necessary steps to protect itself in the territorial sea against any act prejudicial to the security, public policy or fiscal interests of the State, and, in the case of vessels proceeding to inland waters, against any breach of the conditions to which the admission of those vessels is subject.

Observations.

The article grants the coastal State the right to verify, if necessary, the innocent character of the passage of a vessel and to take the steps necessary to protect itself against any act prejudicial to its security, public policy, or fiscal interests. At the same time, in order to avoid needlessly hindering navigation, the coastal State must act with great discretion in exercising this right. Its powers are wider if a vessel's intention to touch at a port is known, and include, *inter alia*, the right to verify the conditions of admission.

Article 6.

Foreign vessels making use of the right of passage shall comply with the laws and regulations enacted in conformity with international usage by the coastal State, and, in particular, as regards :

(a) The safety of traffic and the protection of channels and buoys ;

(b) The protection of the waters of the coastal State against the various pollutions caused by vessels to which they may be exposed ;

(c) The protection of the products of the sea ;

(d) The rights of fishing, shooting and analogous rights belonging to the coastal State.

The coastal State may not, however, apply these rules or regulations in such a manner as to discriminate between foreign vessels of different nationalities, nor, save in matters relating to fishing and shooting, between national vessels and foreign vessels.

Observations.

The State may enact special laws and regulations regarding the manner in which navigation in the territorial sea must be carried out. It will not, however, have unlimited legislative powers in the matter, but will have to conform to international usage. The article enumerates four categories which are particularly concerned as regards the enactment of these regulations.

It was not considered desirable to include a provision extending the right of innocent passage to persons and goods on board vessels. Obviously, the intention was not to limit the right of passage to the vessels alone, but to include persons and property on board. Such a provision, however, would, on the one hand, have been incomplete, because it makes no mention of matters such as postal correspondence and passengers' luggage, while, on the other hand, it would go too far because it apparently allows the coastal State no right to arrest a person or seize goods on board.

The term " enacted " must be understood in the sense that the laws and regulations will have to be duly published. Vessels infringing the laws and regulations which have been regularly enacted are naturally amenable to the courts of the coastal State.

Article 7.

No charge may be levied upon foreign ships by reason only of their passage through the territorial sea.

Charges may only be levied upon a foreign ship passing through the territorial sea as payment for specific services rendered to the ship. These charges shall be levied without discrimination.

Observations.

The object of this article is to exclude any charges in respect of general services to navigation (lighthouse or buoyage dues), and to allow payment only for special services rendered to the ship (pilotage or towage dues). These charges must be applied under conditions of equality.

The provisions of the first paragraph will include the case of compulsory anchoring in the territorial sea in the circumstances laid down in Article 3, last paragraph.

Article 8.

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

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

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

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

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

The local authorities shall in all cases pay due regard to the interests of navigation when making an arrest on board a vessel.

Observations.

In the case of an offence committed on board a foreign vessel in the territorial sea, a conflict of competence may arise between the coastal State and the flag State. If the coastal State wishes to stop the vessel with a view to bringing the guilty party before its courts, another conflict of interests may arise ; on the one hand, the interest of navigation, which must be hindered as little as possible, and on the other, that of the coastal State, which wishes to apply its criminal laws throughout its territory. The proposed article does not attempt to provide a solution for the first of these conflicts ; it deals only with the second. The question of the judicial competence of each of the two States is thus left unaffected, except that the coastal State's power to arrest persons or carry out investigations (*e.g.*, a search) *during the passage* through its waters will be confined to the cases enumerated in the article. Nevertheless, in cases not provided for in the article, legal proceedings may still be taken by the coastal State against the guilty party if the latter afterwards goes ashore. It was considered whether the words " in the opinion of the competent local authority " should not be included under (20), after the word " crime ", but it was decided not to adopt this proposal. The introduction of these words would give the local authority an exclusive competence which does not belong to it. In any dispute between the coastal State and the flag State, there should be some objective criterion. Nevertheless, in practice, the opinion of the competent authority will almost always have to be regarded as decisive.

It follows from the terms of the article that the coastal State could not divert from its course a foreign vessel passing through the territorial sea without entering the inland waters simply because there happened to be on board a person wanted by the judicial authorities of the coastal State for some punishable act committed elsewhere than on board the vessel. It would be still less possible for a request for extradition addressed to the coastal State in respect of an offence committed abroad to be regarded as a valid ground for interrupting the vessel's voyage.

The local authority, however, must take the interests of navigation into account when making an arrest on board the vessel.

In the case of a vessel lying in the territorial sea, the coastal State's powers to arrest a person on board are more extensive than in the case of vessels which are simply passing along the coast and through the territorial sea. This also applies to vessels which have touched at a port or have come from a navigable waterway. The fact that a vessel has anchored in a port and had relations with the land, taken aboard passengers, etc., increases the State's powers in this matter. The coastal State, however, must always do its utmost to avoid hindering navigation. It would be quite unjustifiable to interrupt the voyage of a large liner putting out to sea in order to arrest a person alleged to have committed some minor offence on land. Similarly, the judicial authorities of the coastal State should, as far as possible, refrain from arresting persons belonging to the officers or crew of the vessel if their absence would make it impossible to continue the voyage.

Article 9.

A coastal State may not arrest or divert a foreign vessel passing through the territorial sea for the purpose of exercising civil jurisdiction in relation to a person on board the vessel. A coastal State may not levy execution against or arrest the vessel for the purpose of any civil proceedings, in accordance with its laws, save only in respect of obligations or liabilities incurred by the vessel itself in the course of, or for the purpose of, its voyage through the waters of the coastal State.

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

Observations.

As in the previous articles, the aim of this article is to establish a fair balance between the interests of navigation and the rights of the coastal State, in this case, as regards the exercise of civil jurisdiction. The rules adopted for criminal jurisdiction have been closely followed. If the vessel is only traversing the territorial sea, without touching the inland waters, execution or arrest can only take place as a result of facts occurring in the waters of the coastal State — collisions, for instance.

Article 10.

The rules set out above in Articles 8 and 9 are without prejudice to the question of the treatment of vessels exclusively employed in a governmental and non-commercial service, and of the persons on board such vessels.

Observations.

The question arose whether, in the case of vessels belonging to a Government and operated by a Government for commercial purposes, certain privileges and immunities might be claimed as regards the application of Articles 8 and 9. The Brussels Convention on immunities for Government vessels deals with immunity in the matter of civil jurisdiction. In the light of the principles embodied in that Convention (see in particular Article 3), the present Convention lays down that the rules set out above are without prejudice to the question of the treatment of vessels exclusively employed in a governmental and non-commercial service. Government vessels operated for commercial purposes therefore fall within the scope of Articles 8 and 9.

Article 11.

The pursuit of a foreign vessel for an infringement of the law and regulations of a coastal State begun when the foreign vessel is within the inland waters or territorial sea of the State may be continued outside the territorial sea so long as the pursuit has not been interrupted. The right of pursuit ceases as soon as the vessel which is pursued enters the territorial sea of its own country or of a third State.

The pursuit shall only be deemed to have begun when the pursuing vessel has ordered the vessel which is pursued to stop before the latter has left the limits of the territorial sea. The order to stop shall be given at a distance which enables it to be seen or heard by the other vessel.

A capture on the high sea shall be notified without delay to the State whose flag the captured vessel flies.

Observations.

This article confirms the " right of pursuit " of the coastal State and gives certain explanations of the subject. When the foreign vessel in the territorial sea receives the order to stop, the vessel giving the order need not necessarily be in that sea also. This case arises in practice in connection with patrol vessels which, in order to supervise the fisheries, cruise along the coast at a little distance outside the limits of the territorial sea. In such case, when the pursuit commences, it will be sufficient if the offending vessel is within the territoral sea.

Pursuit may not be interrupted ; what may be deemed to constitute an interruption of pursuit is a question of fact. The right of pursuit ceases in every case as soon as the vessel enters the territorial waters of its own country or of a third State.

The point was rasied : at what precise moment may pursuit be deemed to have commenced. If a patrol vessel receives a wireless message informing it that an offence has been committed and sets out without having seen the offending vessel, can it be said that pursuit has already begun? The conclusion reached was that it cannot. Pursuit cannot be deemed to have commenced until the foreign vessel has been ordered by the other vessel to stop. In order to avoid abuses, a wireless order to stop, sent out at a great distance, cannot be regarded as sufficient.

The arrest of a foreign vessel on the high sea is an occurrence of so exceptional a nature that, in order to avoid all misunderstanding, the State whose flag the vessel flies must immediately be notified of the reasons for the arrest. It was therefore deemed advisable to lay down that the State of the vessel effecting the capture must notify the other State concerned.

2. Warships.

Article 12.

As a general rule, a coastal State will not forbid the passage of foreign warships in its territorial sea and will not require a previous authorisation or notification.

A coastal State has the right to regulate the conditions of such passage.

Submarine warships shall navigate on the surface.

Observations.

To specify that a coastal State will not forbid the innocent passage of foreign warships through its territorial sea is but to confirm existing usage. Usage also has it that no strict and absolute rule should be laid down, but that a State should, in exceptional cases, be allowed to forbid the passage of foreign warships.

A coastal State may regulate the conditions of passage, particularly as regards the number of foreign units passing simultaneously through its territorial sea — this sea being regarded either as a whole or by sectors — though as a general rule no previous authorisation or even notification will be required.

Article 13.

If a foreign warship passing through the territorial sea 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.

Observations.

A special stipulation to the effect that warships must, in the territorial sea, respect the local laws and regulations was held to be unnecessary. Nevertheless, it seemed advisable to indicate that non-observance of these regulations terminates the right of free passage, and that consequently the warship may be required to leave the territorial sea.

ANNEX IV.

CONTINUATION OF THE DRAFT REPORT, CIRCULATED TO THE MEMBERS OF THE COMMITTEE ON APRIL 7th, 1930. (WORK OF THE SECOND SUB-COMMITTEE.)

BASE-LINE.

Article 14.

Subject to the provisions regarding bays and islands, the breadth of the territorial sea is measured from the line of low-water mark along the entire coast.

For the purpose of this Convention, the line of low-water mark is that indicated on the charts officially used by the coastal State, provided the latter line does not appreciably depart from the line of mean low-water spring tides.

Rises in the soil situated within the territorial sea, even when exposed only at low tide, are taken into consideration for the delimitation of the territorial sea.

Observations.

The line of low-water mark following all the sinuosities of the coast is taken as the basis for calculating the breadth of the territorial sea. No account is taken of (1) bays or (2) islands near the coast ; these two cases will be dealt with later. This article merely lays down the general principle.

The traditional expression " low-water mark " may be interpreted in different ways and requires definition. In practice, different States employ different criteria to determine this line. The two following criteria have been taken more particularly into consideration : first, the low-water mark indicated on the charts officially used by the coastal State, and, secondly, the line of mean low-water spring tides. Preference was given to the first criterion, as it appeared to be more practical. True, not all States possess official charts published by their own hydrographical services ; every coastal State, however, has some chart adopted as official by the State authorities, and an expression has therefore been chosen which also includes these charts.

The divergencies due to the adoption of different criteria in different charts are very slight and might be disregarded. In order to avoid all abuses, however, the proviso has been added that the line indicated in the chart must not depart appreciably from what is held to be the more accurate criterion : the line of mean low-water spring tides. The term " appreciably " is admittedly rather vague. Seeing, however, that this provision only applies in cases in which there is an obvious absence of good faith, and as, moreover, absolute precision would be extremely difficult to attain, it was thought that this expression might be accepted.

If a rise in the soil which is only exposed at low tide is situated in the territorial sea off the mainland, or off an island, it possesses in accordance with the principle adopted in the North Sea Fisheries Convention of 1882 its own territorial sea.

It must be understood that the provisions of the present Convention do not in general apply to a coastline which is ordinarily or perpetually ice-bound.

PORTS.

Article 15.

In front of ports the outermost permanent harbour works shall be regarded as a part of the coast in determining the breadth of the territorial sea.

Observations.

The waters of the port as far as a line drawn between the outermost fixed works thus constitute the inland waters of the coastal State.

ROADSTEADS.

Article 16.

Roadsteads which serve for the loading, unloading and anchoring of vessels, and the limits of which have been fixed for that purpose by the coastal State, are included in the territorial sea of that State, although they may be situated partly outside the general line of the territorial sea. The coastal State shall indicate what roadsteads are, in fact, so employed and what are their boundaries.

Observations.

It was proposed that roadsteads which serve for the loading and unloading of vessels should be assimilated to *ports*. These roadsteads would then have been regarded as inland waters, and the territorial sea would have been measured from their outer limits. It was decided, however, not to adopt this proposal. Although it was recognised that the coastal State must be permitted to exercise special supervisory and police rights over the roadsteads, it was considered unjustifiable to regard the waters in question as inland waters, since otherwise the innocent passage of merchant vessels could have been prohibited therein. To meet these objections it was suggested that the right of passage in such waters should be expressly recognised. Thus, in practice, the main differences between such " inland waters " and the territorial sea would have been that roadsteads would have had a belt of territorial sea of their own. As, however, such a belt was not considered necessary, it was agreed that the waters of the roadstead should be included in the territorial sea of the State, even if they extend beyond the general limit of the territorial sea.

ISLANDS.

Article 17.

Every island has its own territorial sea. An island is an area of land, surrounded by water, which is permanently exposed above the high-water mark.

Observations.

The definition of the term " island " does not exclude artificial islands, provided these are true portions of the territory and not floating works, anchored buoys, etc.

A rise in the soil, which is only exposed at low tide, is not deemed to be an island for the purpose of this Convention (see, however, Article 14).

STRAITS.

Article 18.

In straits which are used for passage between two parts of the high sea, the territorial sea shall be delimited in the same way as in front of other parts of the coast, though bordered only by one State.

When the width exceeds the breadth of the two belts of territorial sea, the waters included between those two belts constitute the high sea. If the result of this delimitation is to leave an area of high sea not exceeding two miles in breadth enclosed within the territorial sea, this area may be assimilated to the territorial sea.

Observations.

In the straits referred to in this article, the belts of sea around the coast constitute the territorial sea in the same way as off any other part of the coast. The belt of sea between the two shores may not be regarded as forming part of the inland waters, even if the two belts of territorial sea meet and if both shores belong to the same State. The rules regarding the adoption of the line of demarcation between the inland waters and the territorial sea are the same as off other parts of the coast.

When the width throughout the strait exceeds the sum of the breadths of the two belts of territorial sea, a channel of the high sea passes through the whole of the strait. On the other hand, if the width throughout the strait is less than the breadth of the two belts of territorial sea, the waters of the strait will be territorial waters. Other cases may and in fact do arise : at certain places the width of the strait is greater than, while elsewhere it is equal to, or less than, the total breadth of the two belts of territorial sea. In these cases, portions of the high sea may be enclosed within the territorial waters. It was held that there was no valid reason why these enclosed portions of sea — which may be quite large in area — should not be treated as the high sea. If such areas are of very small extent, however, they may, for practical reasons, be assimilated to territorial waters ; but such exceptions will be confined to " enclaves " of sea not more than two nautical miles in width.

As in the case of bays having several coastal States, no rules were laid down regarding the drawing of the line of demarcation between the territorial sea in straits having two or more coastal States and a width less than the breadth of the belts of territorial sea.

The article simply lays down rules for straits which serve as a passage between two parts of the high sea. No regime is provided for straits which simply give access to inland waters. As regards such straits, the rules concerning bays, and where necessary islands, will continue to be applicable.

Article 19.

Passage may not be hindered on any pretext even in the case of warships in straits between two parts of the high sea used for international navigation.

Observations.

According to the previous article, the waters of straits which do not form part of the high sea constitute territorial sea. It is essential to ensure in time of peace, in all circumstances, the passage of merchant vessels and warships through straits between two parts of the high sea forming ordinary routes of international navigation.

DELIMITATION OF THE TERRITORIAL SEA AT THE MOUTH OF A RIVER.

Article 20.

When a river flows into the sea without an estuary, the waters of the river constitute inland waters as far as a line drawn across the mouth following the general direction of the

coast, whatever the width of the river. If the river flows into the sea through an estuary, the rules applicable to bays apply to the estuary.

Observations.

This article does not seem to call for observations.

EXERCISE OF JURISDICTION OVER FOREIGN VESSELS IN PORTS.

The Preparatory Committee, when drawing up its questionnaire, observed that this subject did not quite lie within the programme of questions with which the Conference would have to deal. The Committee found that the opinions of the Governments were divided as to the desirability of embodying this point in the future Convention.

The Committee agreed not to include any clause of this kind in the Convention. It was pointed out that the subject was a very complex one, lying outside the scope of the Convention, and could not be treated in full in the two Bases of Discussion drawn up by the Preparatory Committee. Further, the opinion was expressed that, although these rules could not be said to be entirely unconnected with the Convention, there was no urgent need to settle the problems involved at once ; indeed, they already form the subject of a large number of bilateral Conventions. Other delegations would have preferred the two Bases of Discussion (Nos. 27 and 28) to be discussed and, if possible, included in the Convention as, in their opinion, they solve certain aspects of the problem dealt with therein ; but, in view of the short time available, these delegations do not object to the omission of the Bases.

It was decided to submit the following recommendation to the Conference :

" The Conference recommends that the Convention on the International Regime of Maritime Ports signed at Geneva on December 9th, 1923, should be supplemented by the adoption of provisions regulating the scope of the judicial powers of States with regard to vessels in their inland waters."

ANNEX V.

REPORT ADOPTED BY THE COMMITTEE ON APRIL 10th, 1930.[1]

Rapporteur : M. FRANÇOIS (Netherlands).

The Second Committee was appointed to study the Bases of Discussion drawn up by the Preparatory Committee with regard to territorial waters (see document C.74.M.39. 1929.V). After a general discussion, this Committee formed two Sub-Committees, the first to examine Bases of Discussion Nos. 1, 2, 5 and 19 to 26 inclusive, the second to examine Bases Nos. 6 to 18 inclusive. Bases Nos. 3, 4, 27 and 28 were reserved for consideration by the full Committee. The results of the work of the Sub-Committees were embodied in two reports and submitted to the Committee.[2]

The Committee appointed as its Chairman M. Göppert, delegate of Germany, as Vice-Chairman His Excellency M. Goicoechea, delegate of Spain, and as its Rapporteur Professor François, delegate of the Netherlands.

The Chairman of the First Sub-Committee was His Excellency M. Barbosa de Magalhães, delegate of Portugal, the Second Sub-Committee being presided over by the Chairman of the plenary Committee, M. Göppert. The Second Sub-Committee appointed a special Committee of Experts, which defined for it certain technical terms. This Committee was presided over by Vice-Admiral Surie (Netherlands). Other special Committees were set up to study particular questions.

The discussions of the Committee showed that all States admit the principle of the freedom of maritime navigation. On this point, there are no differences of opinion. The freedom of navigation is of capital importance to all States ; in their own interests they ought to favour the application of the principle by all possible means.

On the other hand, it was recognised that international law attributes to each coastal State sovereignty over a belt of sea round its coasts. This must be regarded as essential for the protection of the legitimate interests of the State. The belt of territorial sea forms

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[1] This document is here reproduced in its final form, *i.e.*, certain drafting changes made by the Drafting Committee of the Conference are incorporated and mistakes in the English text as originally submitted to the Committee have been corrected.

[2] See Annexes III and IV respectively.

part of the territory of the State ; the sovereignty which the State exercises over this belt does not differ in kind from the authority exercised over its land domain.

This sovereignty is, however, limited by conditions established by international law ; indeed, it is precisely because the freedom of navigation is of such great importance to all States that the right of innocent passage through the territorial sea has been generally recognised.

There may be said to have been agreement among the delegations on these ideas. With regard, however, to the breadth of the belt over which the sovereignty of the State should be recognised, it soon became evident that opinion was mueh divided. These differences of opinion were to a great extent the result of the varying geographical and economic conditions in different States and parts of the world. Certain delegations were also anxious about the consequences which, in their opinion, any rules adopted for time of peace might indirectly have on questions of neutrality in time of war.

The Committee refrained from taking a decision on the question whether existing international law recognises any fixed breadth of the belt of territorial sea. Faced with differences of opinion on this subject, the Committee preferred, in conformity with the instructions it received from the Conference, not to express an opinion on what ought to be regarded as the existing law, but to concentrate its efforts on reaching an agreement which would fix the breadth of the territorial sea for the future. It regrets to confess that its efforts in this direction met with no success.

The Preparatory Committee had suggested, as a basis of discussion, the following scheme :

(1) Limitation of the breadth of the territorial sea to three miles ;

(2) Recognition of the claim of certain States specifically mentioned to a territorial sea of greater breadth ;

(3) Acceptance of the principle of a zone on the high sea contiguous to the territorial sca in which the coastal State would be able to exercise the control necessary to prevent, within its territory or territorial sea, the infringement of its Customs or sanitary regulations or interference with its security by foreign vessels, such control not to be exercised more than twelve miles from the coast.

The Committee was unable to accept this scheme. Objections were raised by various delegations to each of the three points in turn.

The fixing of the breadth at three miles was opposed by those States which maintain that there is no rule of law to that effect, and that their national interests necessitate the adoption of a wider belt. The proposal to recognise a wider belt for these States and for them alone, led to objcctions from two sides : some States were not prepared to recognise exceptions to the three-mile rule, while the above-mentioned States themselves were of opinion that the adoption of such a rule would be arbitrary and were not prepared to accept any special position which was conceded to them merely as part of the terms of an agreement. The idea embodied in the third point, namely, the acceptance of a contiguous zone, found a number of supporters though it proved ineffective as the basis for a compromise.

The first question to be considered was the nature of the rights which would belong to the coastal States in such a zone. The supporters of the proposal contemplated that, first of all, the coastal State should be able to enforce its Customs regulations over a belt of sea extending twelve miles out from the coast. It need scarcely be said that States would still be free to make treaties with one another conferring special or general rights in a wider zone — for instance, to prevent pollution of the sea. Other States, however, were of opinion that, in Customs matters, bilateral or regional agreements would be preferable to the making of collective Conventions, in view of the special circumstances which would apply in each case. These States were opposed to granting the coastal State any right of exercising Customs or other control on the high seas outside the territorial sea, unless the right in question arose under a special Convention concluded for the purpose. The opposition of these States to the establishment of such a zone was further strengthened by the possibility that, if such rights were accorded, they would eventually lead to the creation of a belt of territorial sea which included the whole contiguous zone.

Other States declared that they were ready to accept, if necessary, a contiguous zone for the exercise of Customs rights, but they refused to recognise the possession by the coastal State of any rights of *control* with a view to preventing interference with its *security*. The recognition of a special right in the matter of legitimate defence against attack would, in the opinion of these States, be superfluous, since that right already existed under the general principles of international law ; if, however, it was proposed to give the coastal State still wider powers in this matter, the freedom of navigation would thereby be seriously endangered, without, on the other hand, affording any effective guarantee to the coastal State. But other States regarded the granting of powers of this nature in the contiguous zone as being a matter of primary importance. The opinion was expressed that the coastal State should be able to exercise in the air above the contiguous zone rights corresponding to those it might be in a position to claim over the contiguous zone itself. The denial of such rights over the contiguous zones both of sea and air would therefore, they stated, influence the attitude of the States in question with regard to the breadth of the territorial sea.

Certain delegations pointed out how important it was that the coastal State should have in the contiguous zone effective administration of its fishery laws and the right of protecting fry. It was, on the other hand, agreed that it was probably unnecessary to recognise special rights in the contiguous zone in the matter of sanitary regulations.

The various points of view referred to in so far as they were expressed in the plenary meetings of the Committee, will be found in the Minutes, and, in particular, in those of the thirteenth meeting on April 3rd, 1930 (Appendix 3).

After discussions, which could not be prolonged because of the limited time available, the Committee came to the conclusion that, in view of these wide divergencies of opinion, no agreement could be reached for the present on these fundamental questions.

This conclusion necessarily affected the result of the examination of the other points.

The First Sub-Committee had drawn up and adopted thirteen articles on the subjects which had been referred to it for examination. The Committee had to decide what should be done with the result of the Sub-Committee's labours. Some delegations thought that, despite the impossibility of reaching an agreement on the breadth of the territorial sea, it was both possible and desirable to conclude a Convention on the legal status of that sea, and for that reason proposed that these articles should be embodied in a Convention to be adopted by the Conference. Most of the delegations, however, took a contrary view. The articles in question were intended to form part of a Convention which would determine the breadth of the territorial sea. In several cases, the acceptance of these articles had been in the nature of a compromise and subject to the condition, expressed or implied, that an agreement would be reached on the breadth of the belt. In the absence of such an agreement, there could be no question of concluding a Convention containing these articles alone. On the basis of a recent precedent, a third compromise was suggested, namely, that the articles should be embodied in a Convention which might be signed and ratified, but which would not come into force until a subsequent agreement was concluded on the breadth of the territorial sea. It was eventually agreed that no Convention should be concluded immediately, and it was decided that the articles proposed by the First Sub-Committee and provisionally approved by the Committee should be attached as an Appendix to the Committee's report (Appendix 1).

The absence of agreement as to the breadth of the territorial sea affected to an even greater extent the action to be taken on the Second Sub-Committee's report. The questions which that Sub-Committee had to examine are so closely connected with the breadth of the territorial sea that the absence of an agreement on that matter prevented the Committee from taking even a provisional decision on the articles drawn up by the Sub-Committee. These articles, nevertheless, constitute valuable material for the continuation of the study of the question, and are therefore also attached to the present report (Appendix 2).

One difficulty which the Committee encountered in the course of its examination of several points of its agenda was that the establishment of general rules with regard to the belt of the territorial sea would, in theory at any rate, effect an inevitable change in the existing status of certain areas of water. In this connection, it is almost unnecessary to mention the bays known as " historic bays " ; and the problem is besides by no means confined to bays, but arises in the case of other areas of water also. The work of codification could not affect any rights which States may possess over certain parts of their coastal sea, and nothing, therefore, either in this report or in its appendices, can be open to that interpretation. On the other hand, it must be recognised that no definite or concrete results can be obtained without determining and defining those rights. The Committee realises that, in this matter too, the work of codification will encounter certain difficulties.

Nevertheless, in the Committee's opinion, it should not be concluded that difficulties in arriving at an immediate Convention must necessarily lead States to abandon the work begun. Accordingly, the Committee proposes that the Conference should request the Council of the League of Nations to invite the Governments to continue, in the light of the Conference's discussions, the study of the breadth of the territorial sea and its allied questions and to seek ways and means of promoting the work of codification, and the good understanding of States in all that concerns the development of international maritime traffic.[1] In this connection, it is suggested that the Council of the League should consider whether the various States should be invited to forward to the Secretary-General official information, either in the form of charts or in some other form, regarding the base-lines adopted by them for the measurement of their belts of territorial sea.

Lastly, the Committee proposes that the Conference should recommend the Council of the League to convene, as soon as it deems opportune, a new conference, either for the conclusion of a general Convention on all questions connected with the territorial sea, or even — if such a course seems desirable — of a Convention limited to the points dealt with in Appendix 1.

* * *

[1] See resolution Appendix 4.

The Preparatory Committee, when drawing up its questionnaire, observed that the question of jurisdiction over foreign vessels in ports did not quite lie within the scope of the questions with which the Conference was to be called upon to deal. After examining the replies of the Governments, the Preparatory Committee found that opinions were divided as to the desirability of embodying this point in the future Convention.

The Committee decided not to deal with this subject. It was pointed out that it was a very complex one which lay outside the scheme of the proposed Convention, and could not be treated in full in the two Bases of Discussion drawn up by the Preparatory Committee. Further, the opinion was expressed that, although the rules on the subject could not be said to have no connection with the Convention, there was no urgent need to settle the problems involved at once ; indeed, they already form the subject of a large number of bilateral Conventions. Other delegations would have preferred to have seen the two Bases discussed since, in their opinion, they solved certain aspects of the problem ; but, in view of the short time available, these delegations did not object to the deletion of the Bases.

It was decided to submit the following recommendation to the Conference :

> " The Conference recommends that the Convention on the International Regime of Maritime Ports, signed at Geneva on December 9th, 1923, should be supplemented by the adoption of provisions regulating the scope of the judicial powers of States with regard to vessels in their inland waters."

Although the questions of protection of the various products of the sea and the regulation of fisheries do not, strictly speaking, come within the scheme of the Conference's work, nevertheless, a general agreement in this field would lessen the need which some States feel for a contiguous zone of sea for fishery purposes. The Committee proposes that the Conference should adopt the following recommendation :

> " The Conference,
>
> " Taking into consideration the importance of the fishing industry to certain countries ;
>
> " Recognising further that the protection of the various products of the sea must be considered, not only in relation to the territorial sea, but also the waters beyond it ;
>
> " And that it is not competent to deal with these problems nor to do anything to prejudge their solution ;
>
> " Noting also the steps already initiated on these subjects by certain organs of the League of Nations,
>
> " Desires to affirm the importance of the work already undertaken or to be undertaken regarding these matters, either through scientific research, or by practical methods ; that is, measures of protection and collaboration which may be recognised as necessary for the safeguarding of riches constituting the common patrimony."

Appendix 1.

THE LEGAL STATUS OF THE TERRITORIAL SEA.

GENERAL PROVISIONS.

Article 1.

The territory of a State includes a belt of sea described in this Convention as the territorial sea.

Sovereignty over this belt is exercised subject to the conditions prescribed by the present Convention and the other rules of international law.

Observations.

The idea which it has been sought to express by stating that the belt of territorial sea forms part of the territory of the State is that the power exercised by the State over this belt is, in its nature, in no way different from the power which the State exercises over its domain on land. This is also the reason why the term " sovereignty " has been retained, a term which, better than any other, describes the juridical nature of this power. Obviously, sovereignty over the territorial sea, like sovereignty over the domain on land, can only be exercised subject to the conditions laid down by international law. As the limitations which international law imposes on the power of the State in respect of the latter's sovereignty over the territorial sea are greater than those it imposes in respect of the domain on land, it has not been thought superfluous to make special mention of these limitations in the text of the article itself. These limitations are to be sought in the first place in the present Convention ; as, however, the Convention cannot hope to exhaust the matter, it has been thought necessary to refer also to the other rules of international law.

There was some hesitation whether it would be better to use the term " territorial waters " or the term " territorial sea ". The use of the first term, which was employed by the Preparatory Committee, may be said to be more general and it is employed in several international Conventions. There can, however, be no doubt that this term is likely to lead — and indeed has led — to confusion, owing to the fact that it is also used to indicate inland waters, or the sum total of inland waters and " territorial waters " in the restricted sense of this latter term. For these reasons, the expression " territorial sea " has been adopted.

Article 2.

The territory of a coastal State includes also the air space above the territorial sea, as well as the bed of the sea, and the subsoil.

Nothing in the present Convention prejudices any Conventions or other rules of international law relating to the exercise of sovereignty in these domains.

Observations.

It has been thought desirable that a formal provision should be inserted concerning the juridical status of the air above the territorial sea, the bed of the sea, and the subsoil. The text as drafted is on similar lines to the previous article. It therefore follows that the coastal State may also exercise sovereignty in the air space above the territorial sea, and over the bed of the sea and the subsoil. It is important to emphasise that in these domains also sovereignty is limited by the rules of international law. As regards the territorial sea, including the air and the bed of the sea as used in maritime navigation, these limitations are, in the first place, to be found in the present Convention. So far as concerns the air space the matter is governed by the provisions of other Conventions ; as regards the bed of the sea and the subsoil, there are but few rules of international law.

RIGHT OF PASSAGE.

Article 3.

" Passage " means navigation through the territorial sea for the purpose either of traversing that sea without entering inland waters, or of proceeding to inland waters, or of making for the high sea from inland waters.

Passage is not *innocent* when a vessel makes use of the territorial sea of a coastal State for the purpose of doing any act prejudicial to the security, to the public policy or to the fiscal interests of that State.

Passage includes stopping and anchoring, but in so far only as the same are incidental to ordinary navigation or are rendered necessary by *force majeure* or by distress.

Observations.

For a passage to be deemed other than innocent, the territorial sea must be used for the purpose of doing some act prejudicial to the security, to the public policy or to the fiscal interests of the State. It is immaterial whether or not the attention to do such an act existed at the time when the vessel entered the territorial sea, provided that the act is in fact committed in that sea. In other words, the passage ceases to be innocent if the right accorded by international law and defined in the present Convention is abused and in that event, the coastal State resumes its liberty of action. The expression " fiscal interests " is to be interpreted in a wide sense, and includes all matters relating to Customs. Import, export and transit prohibitions, even when not enacted for revenue purposes but, *e.g.*, for purposes of public health, are covered by the language used in the second paragraph, promulgated by the coastal State.

It should, moreover, be noted that when a State has undertaken international obligations relating to freedom of transit over its territory, either as a general rule or in favour of particular States, the obligations thus assumed also apply to the passage of the territorial sea. Similarly, as regards access to ports or navigable waterways, any facilities the State may have granted in virtue of international obligations concerning free access to ports or shipping on the said waterways, may not be restricted by measures taken in those portions of the territorial sea which may reasonably by regarded as approaches to the said ports or navigable waterways.

1. VESSELS OTHER THAN WARSHIPS.

Article 4.

A coastal State may put no obstacles in the way of the innocent passage of foreign vessels in the territorial sea.

Submarine vessels shall navigate on the surface.

Observations.

The expression " vessels other than warships " includes not only merchant vessels, but

also vessels such as yachts, cable ships, etc., if they are not vessels belonging to the naval forces of a State at the time of the passage.

Article 5.

The right of passage does not prevent the coastal State from taking all necessary steps to protect itself in the territorial sea against any act prejudicial to the security, public policy or fiscal interests of the State, and, in the case of vessels proceeding to inland waters, against any breach of the conditions to which the admission of those vessels to those waters is subject.

Observations.

The article gives the coastal State the right to verify, if necessary, the innocent character of the passage of a vessel and to take the steps necessary to protect itself against any act prejudicial to its security, public policy, or fiscal interests. At the same time, in order to avoid unnecessary hindrances to navigation, the coastal State is bound to act with great discretion in exercising this right. Its powers are wider if a vessel's intention to touch at a port is known, and include, *inter alia*, the right to satisfy itself that the conditions of admission to the port are complied with.

Article 6.

Foreign vessels exercising the right of passage shall comply with the laws and regulations enacted in conformity with international usage by the coastal State, and, in particular, as regards :

(a) The safety of traffic and the protection of channels and buoys ;

(b) The protection of the waters of the coastal State against pollution of any kind caused by vessels ;

(c) The protection of the products of the territorial sea ;

(d) The rights of fishing, shooting and analogous rights belonging to the coastal State.

The coastal State may not, however, apply these rules or regulations in such a manner as to discriminate between foreign vessels of different nationalities, or, save in matters relating to fishing and shooting, between national vessels and foreign vessels.

Observations.

International law has long recognised the right of the coastal State to enact, in the general interest of navigation, special regulations applicable to vessels exercising the right of passage through the territorial sea. The principal powers which international law has hitherto recognised as belonging to the coastal State for this purpose are defined in this article.

It has not been considered desirable to include any special provision extending the right of innocent passage to persons and merchandise on board vessels. It need hardly be said that there is no intention to limit the right of passage to the vessels alone, and that persons and property on board are also included. A provision, however, specially referring to " persons and merchandise " would, on the one hand, have been incomplete, because it would not, *e.g.*, cover such things as mails or passengers' luggage, whilst, on the other hand, it would have gone too far, because it might have excluded the right of the coastal State to arrest an individual or to seize goods on board.

The term " enacted " must be understood in the sense that the laws and regulations are to be duly promulgated. Vessels infringing the laws and regulations which have been properly enacted are clearly amenable to the courts of the coastal State.

The last paragraph of the article must be interpreted in a broad sense ; it does not refer only to the laws and regulations themselves, but to all measures taken by the coastal State for the purposes of the article.

Article 7.

No charge may be levied upon foreign vessels by reason only of their passage through the territorial sea.

Charges may only be levied upon a foreign vessel passing through the territorial sea as payment for specific services rendered to the vessel. These charges shall be levied without discrimination.

Observations.

The object of this article is to exclude any charges in respect of general services to navigation (light or conservancy dues, etc.), and to allow payment to be demanded only for special services rendered to the vessel (pilotage, towage, etc.). These latter charges must be made on a basis of strict equality and with no discrimination between one vessel and another.

The provision of the first paragraph will include the case of compulsory anchoring in the territorial sea, in the circumstances indicated in Article 3, last paragraph.

Article 8.

A coastal State may not take any steps on board a foreign vessel passing through the

territorial sea to arrest any person or to conduct any investigation by reason of any crime committed on board the vessel during its passage, save only in the following cases :

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

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

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

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

The local authorities shall, in all cases, pay due regard to the interests of navigation when making an arrest on board a vessel.

Observations.

In the case of an offence committed on board a foreign vessel in the territorial sea, a conflict of jurisdiction may arise between the coastal State and the State whose flag the vessel flies. If the coastal State wishes to stop the vessel with a view to bringing the guilty party before its courts, another kind of conflict may arise : that is to say, between the interests of navigation, which ought to be interfered with as little as possible, and the interests of the coastal State in its desire to make its criminal laws effective throughout the whole of its territory. The proposed article does not attempt to provide a solution for the first of these conflicts ; it deals only with the second. The question of the judicial competence of each of the two States is thus left unaffected, except that the coastal State's power to arrest persons or carry out investigations (*e.g.*, a search) *during the passage* of the foreign vessel through its waters will be confined to the cases enumerated in the article. In cases not provided for in the article, legal proceedings may still be taken by the coastal State against an offender if the latter is found ashore. It was considered whether the words " in the opinion of the competent local authority " should not be added in (2) after the word " crime ", but the suggestion was not adopted. In any dispute between the coastal State and the flag State, some objective criterion is desirable and the introduction of these words would give the local authority an exclusive competence which it is scarcely entitled to claim.

The coastal State cannot stop a foreign vessel passing through the territorial sea without entering the inland waters of the State simply because there happened to be on board a person wanted by the judicial authorities of the State for some punishable act committed elsewhere than on board the vessel. It would be still less possible for a request for extradition addressed to the coastal State in respect of an offence committed abroad to be regarded as a valid ground for interrupting the vessel's voyage.

In the case of a vessel lying in the territorial sea, the jurisdiction of the coastal State will be regulated by the State's own municipal law and will necessarily be more extensive than in the case of vessels which are simply passing through the territorial sea along the coast. The same observation applies to vessels which have been in one of the ports or navigable waterways of the coastal State. The coastal State, however, must always do its utmost to interfere as little as possible with navigation. The inconvenience caused to navigation by the stopping of a large liner outward bound in order to arrest a person alleged to have committed some minor offence on land can scarcely be regarded as of less importance than the interest which the State may have in securing the arrest of the offender. Similarly, the judicial authorities of the coastal State should, as far as possible, refrain from arresting any of the officers or crew of the vessel if their absence would make it impossible for the voyage to continue.

Article 9.

A coastal State may not arrest nor divert a foreign vessel passing through the territorial sea, for the purpose of exercising civil jurisdiction, in relation to a person on board the vessel. A coastal State may not levy execution against, or arrest, the vessel for the purpose of any civil proceedings save only in respect of obligations or liabilities incurred by the vessel itself in the course of, or for the purpose of, its voyage through the waters of the coastal State.

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

Observations.

The rules adopted for criminal jurisdiction have been closely followed. A vessel which is only navigating the territorial sea without touching the inland waters of the coastal State may in no circumstances be stopped for the purpose of exercising civil jurisdiction in relation to any person on board or for levying execution against or for arresting the vessel itself, except as a result of events occurring in the waters of the coastal State during the voyage in question, as for example, a collision, salvage, etc., or in respect of obligations incurred for the purpose of the voyage.

Article 10.

The provisions of the two preceding articles (Articles 8 and 9) are without prejudice to the question of the treatment of vessels exclusively employed in a governmental and non-commercial service, and of the persons on board such vessels.

Observations.

The question arose whether, in the case of vessels belonging to a Government and operated by a Government for commercial purposes, certain privileges and immunities might be claimed as regards the application of Articles 8 and 9. The Brussels Convention relating to the immunity of State-owned vessels deals with immunity in the matter of civil jurisdiction. In the light of the principles and definitions embodied in that Convention (see in particular Article 3), the article now under consideration lays down that the rules set out in the two preceding articles are without prejudice to the question of the treatment of vessels exclusively employed in a governmental and non-commercial service, and the persons on board such vessels. Government vessels operated for commercial purposes therefore fall within the scope of Articles 8 and 9.

Article 11.

The pursuit of a foreign vessel for an infringement of the laws and regulations of a coastal State begun when the foreign vessel is within the inland waters or territorial sea of the State may be continued outside the territorial sea so long as the pursuit has not been interrupted. The right of pursuit ceases as soon as the vessel which is pursued enters the territorial sea of its own country or of a third State.

The pursuit shall only be deemed to have begun when the pursuing vessel has satisfied itself by bearings, sextant angles, or other like means, that the pursued vessel or one of its boats is within the limits of the territorial sea, and has begun the pursuit by giving the signal to stop. The order to stop shall be given at a distance which enables it to be seen or heard by the other vessel.

A capture on the high sea shall be notified without delay to the State whose flag the captured vessel flies.

Observations.

This article recognises the " right of pursuit " of the coastal State and states the principles with some precision. When the foreign vessel in the territorial sea receives the order to stop, the vessel giving the order need not necessarily be in that sea also. This case arises in practice in connection with patrol vessels which, in order to police the fisheries, cruise along the coast at a little distance outside the limits of the territorial sea. In such case, when the pursuit commences, it will be sufficient if the offending vessel (or its boats, if the infringement is being committed by their means) is within the territorial sea.

Pursuit must be continuous ; once interrupted, it may not be resumed. The question whether a pursuit has or has not been interrupted is a question of fact. The right of pursuit ceases in every case as soon as the vessel enters the territorial sea of its own country or of a third State.

The point was raised : at what precise moment may pursuit be deemed to have begun ? If a patrol vessel receives a wireless message informing it that an offence has been committed and sets out without having seen the offending vessel, can it be said that pursuit has already begun ? The conclusion reached was that it cannot. Pursuit cannot be deemed to have begun until the pursuing vessel has ascertained for itself the actual presence of a foreign vessel in the territorial sea and has, by means of any recognised signal, given it the order to stop. It was thought that, to avoid abuses, an order transmitted by wireless should not be regarded as sufficient, since there were no limits to the distance from which such an order might be given.

The arrest of a foreign vessel on the high sea is an occurrence of so exceptional a nature that, in order to avoid misunderstandings, the State whose flag the vessel flies must be notified of the reasons for the arrest. It was therefore deemed advisable to require the State of the vessel effecting the capture to notify the other State concerned.

2. Warships.

Article 12.

As a general rule, a coastal State will not forbid the passage of foreign warships in its territorial sea and will not require a previous authorisation or notification.

The coastal State has the right to regulate the conditions of such passage.

Submarines shall navigate on the surface.

Observations.

To state that a coastal State will not forbid the innocent passage of foreign warships through its territorial sea is but to recognise existing practice. That practice also, without laying down any strict and absolute rule, leaves to the State the power, in exceptional cases, to prohibit the passage of foreign warships in its territorial sea.

The coastal State may regulate the conditions of passage, particularly as regards the number of foreign units passing simultaneously through its territorial sea — or through

any particular portion of that sea — though, as a general rule, no previous authorisation or even notification will be required.

Under no pretext, however, may there be any interference with the passage of warships through straits constituting a route for international maritime traffic between two parts of the high sea.

Article 13.

If a foreign warship passing through the territorial sea 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.

Observations.

A special stipulation to the effect that warships must, in the territorial sea, respect the local laws and regulations has been thought unnecessary. Nevertheless, it seemed advisable to indicate that, on non-observance of these regulations, the right of free passage ceases and that consequently the warship may be required to leave the territorial sea.

Appendix 2.

REPORT OF THE SECOND SUB-COMMITTEE.

BASE-LINE.

Subject to the provisions regarding bays and islands, the breadth of the territorial sea is measured from the line of low-water mark along the entire coast.

For the purposes of this Convention, the line of low-water mark is that indicated on the charts officially used by the coastal State, provided the latter line does not appreciably depart from the line of mean low-water spring tides.

Elevations of the sea-bed situated within the territorial sea, though only above water at low tide, are taken into consideration for the determination of the base-line of the territorial sea.

Observations.

The line of low-water mark following all the sinuosities of the coast is taken as the basis for calculating the breadth of the territorial sea, excluding the special cases of (1) bays, (2) islands near the coast and (3) groups of islands, which will be dealt with later. The article is only concerned with the general principle.

The traditional expression " low-water mark " may be interpreted in different ways and requires definition. In practice, different States employ different criteria to determine this line. The two following criteria have been taken more particularly into consideration : first, the low-water mark indicated on the charts officially used by the coastal State, and, secondly, the line of mean low-water spring tides. Preference was given to the first, as it appeared to be the more practical. Not every State, it is true, possesses official charts published by its own hydrographic services, but every coastal State has some chart adopted as official by the State authorities, and a phrase has therefore been used which also includes these charts.

The divergencies due to the adoption of different criteria on the different charts are very slight and can be disregarded. In order to guard against abuse, however, the proviso has been added that the line indicated on the chart must not depart appreciably from the more scientific criterion : the line of mean low-water spring tides. The term " appreciably " is admittedly vague. Inasmuch, however, as this proviso would only be of importance in a case which was clearly fraudulent, and as, moreover, absolute precision would be extremely difficult to attain, it is thought that it might be accepted.

If an elevation of the sea-bed which is only uncovered at low tide is situated within the territorial sea off the mainland, or off an island, it is to be taken into consideration on the analogy of the North Sea Fisheries Convention of 1882 in determining the base-line of the territorial sea.

It must be understood that the provisions of the present Convention do not prejudge the questions which arise in regard to coasts which are ordinarily or perpetually ice-bound.

BAYS.

In the case of bays the coasts of which belong to a single State, the belt of territorial waters shall be measured from a straight line drawn across the opening of the bay. If the opening of the bay is more than ten miles wide, the line shall be drawn at the nearest point to the entrance at which the opening does not exceed ten miles.

Observations.

It is admitted that the base-line provided by the sinuosities of the coast should not be maintained under all circumstances. In the case of an indentation which is not very broad at its opening, such a bay should be regarded as forming part of the inland waters. Opinions were divided as to the breadth at which this opening should be fixed. Several delegations were of opinion that bays, the opening of which did not exceed ten miles should be regarded as inland waters ; an imaginary line should be traced across the bay between the two points jutting out furthest, and this line would serve as a basis for determining the breadth of the territorial waters. If the opening of the bay exceeds ten miles, this imaginary line will have to be drawn at the first place, starting from the opening, at which the width of the bay does not exceed ten miles. This is the system adopted, *inter alia*, in the North Sea Fisheries Convention of May 6th, 1882. Other delegations were only prepared to regard the waters of a bay as inland waters if the two zones of territorial sea met at the opening of the bay, in other words, if the opening did not exceed twice the breadth of the territorial sea. States which were in favour of a territorial belt of three miles held that the opening should therefore not exceed six miles. Those who supported this opinion were afraid that the adoption of a greater width for the imaginary lines traced across bays might undermine the principle enunciated in the preceding article so long as the conditions which an indentation has to fulfil in order to be regarded as a bay remained undefined. Most delegations agreed to a width of ten miles provided a system were simultaneously adopted under which slight indentations would not be treated as bays.

However, these systems could only be applied in practice if the coastal States enabled sailors to know how they should treat the various indentations of the coast.

Two systems were proposed ; these have been set out as sub-appendices to the observations on this article. The Sub-Committee gave no opinion regarding these systems, desiring to reserve the possibility of considering other systems or modifications of either of the above systems.

Sub-Appendix A.

PROPOSAL OF THE DELEGATION OF THE UNITED STATES OF AMERICA.

In the case of a bay or estuary the coasts of which belong to a single State, or to two or more States which have agreed upon a division of the waters thereof, the determination of the status of the waters of the bay or estuary shall be made in the following manner :

(1) On a chart or map, a straight line not to exceed ten nautical miles in length shall be drawn across the bay or estuary as follows : The line shall be drawn between two headlands or pronounced convexities on the coast which embrace the pronounced indentation or concavity comprising the bay or estuary if the distance between the two headlands does not exceed ten nautical miles ; otherwise, the line shall be drawn through the point nearest to the entrance at which the width does not exceed ten nautical miles ;

(2) The envelope of all arcs of circles having a radius equal to one-fourth the length of the straight line across the bay or estuary shall then be drawn from all points on the coast of the mainland (at whatever line of sea level is adopted on the charts of the coastal State) but such arcs of circles shall not be drawn around islands in connection with the process which is next described ;

(3) If the area enclosed within the straight line and the envelope of the arcs of circles exceeds the area of a semi-circle whose diameter is equal to one-half the length of the straight line across the bay or estuary, the waters of the bay or estuary inside of the straight line shall be regarded, for the purposes of this Convention, as interior waters ; otherwise, they shall not be so regarded.

When the determination of the status of the waters of a bay or estuary has been made in the manner described above, the delimitation of the territorial waters shall be made as follows :

(1) If the waters of the bay or estuary are found to be interior waters, the straight line across the entrance or across the bay or estuary shall be regarded as the boundary between interior waters and territorial waters, and the three-mile belt of territorial waters shall be measured outward from that line in the same manner as if it were a portion of the coast ;

(2) Otherwise, the belt of territorial waters shall be measured outward from all points on the coast line ;

(3) In either case, arcs of circles of three mile radius shall be drawn around the coasts of islands (if there be any) in accordance with provisions for delimiting territorial waters around islands.

Sub-Appendix B.

COMPROMISE-PROPOSAL OF THE FRENCH DELEGATION

In the case of indentations where there is only one coastal State, the breadth of the territorial sea may be measured from a straight line drawn across the opening of the indentation, provided that the length of this line does not exceed ten miles and that the indentation may properly be termed a bay.

In order that an indentation may be properly termed a bay, the area comprised between the curve of the coast and its chord must be equal to or greater than the area of the segment of the circle the centre of which is situated on the perpendicular to the chord in its middle, at a distance from the chord equal to one-half of the length of this chord and of which the radius is equal to the distance which separates this point from one end of the curve.

PORTS.

In determining the breadth of the territorial sea in front of ports, the outermost permanent harbour works shall be regarded as forming part of the coast.

Observations.

The waters of the port as far as a line drawn between the outermost fixed works thus constitute the inland waters of the coastal State.

ROADSTEADS.

Roadsteads used for the loading, unloading and anchoring of vessels, the limits of which have been fixed for that purpose by the coastal State, are included in the territorial sea of that State, although they may be situated partly outside the general belt of territorial sea. The coastal State must indicate the roadsteads actually so employed and the limits thereof.

Observations.

It had been proposed that roadsteads which serve for the loading and unloading of vessels should be assimilated to *ports*. These roadsteads would then have been regarded as inland waters, and the territorial sea would have been measured from their outer limits. It was thought, however, impossible to adopt this proposal. Although it was recognised that the coastal State must be permitted to exercise special rights of control and of police over the roadsteads, it was considered unjustifiable to regard the waters in question as inland waters, since in that case merchant vessels would have had no right of innocent passage through them. To meet these objections, it was suggested that the right of passage in such waters should be expressly recognised, the practical result being that the only difference between such " inland waters " and the territorial sea would have been the possession by roadsteads of a belt of territorial sea of their own. As, however, such a belt was not considered necessary, it was agreed that the waters of the roadstead should be included in the territorial sea of the State, even if they extend beyond the general limit of the territorial sea.

ISLANDS.

Every island has its own territorial sea. An island is an area of land, surrounded by water, which is permanently above high-water mark.

Observations.

The definition of the term " island " does not exclude artificial islands, provided these are true portions of the territory and not merely floating works, anchored buoys, etc. The case of an artificial island erected near to the line of demarcation between the territorial waters of two countries is reserved.

An elevation of the sea-bed, which is only exposed at low tide, is not deemed to be an island for the purpose of this Convention (see, however, the above proposal concerning the base-line).

GROUPS OF ISLANDS.

Observations.

With regard to a group of islands (archipelago) and islands situated along the coast, the majority of the Sub-Committee was of opinion that a distance of ten miles should be adopted as a basis for measuring the territorial sea outward in the direction of the high sea. Owing to the lack of technical details, however, the idea of drafting a definite text on this subject had to be abandoned. The Sub-Committee did not express any opinion with regard to the nature of the waters included within the group.

STRAITS.

In straits which form a passage between two parts of the high sea, the limits of the territorial sea shall be ascertained in the same manner as on other parts of the coast, even if the same State is the coastal State of both shores.

When the width of the straits exceeds the breadth of the two belts of territorial sea, the waters between those two belts form part of the high sea. If the result of this delimitation is to leave an area of high sea not exceeding two miles in breath surrounded by territorial sea, this area may be assimilated to the territorial sea.

Observations.

Within the straits with which this article deals, the belts of sea around the coast constitute the territorial sea in the same way as on any other part of the coast. The belt of sea between the two shores may not be regarded as inland waters, even if the two belts of territorial sea and both shores belong to the same State. The rules governing the line of demarcation between the ordinary inland waters and the territorial sea are the same as on other parts of the coast.

When the width throughout the straits exceeds the sum of the breadths of the two belts of territorial sea, there is a channel of the high sea through the strait. On the other hand, if the width throughout the strait is less than the breadth of the two belts of territorial sea, the waters of the strait will be territorial waters. Other cases may, and in fact do, arise : at certain places, the width of the strait is greater than, while elsewhere it is equal to, or less than, the total breadth of the two belts of territorial sea. In these cases, portions of the high sea may be surrounded by territorial sea. It was thought that there was no valid reason why these enclosed portions of sea — which may be quite large in area — should not be treated as the high sea. If such areas are of very small extent, however, practical reasons justify their assimilation to territorial sea ; but it is proposed in the article to confine such exceptions to " enclaves " of sea not more than two nautical miles in width.

Just as in the case of bays which lie within the territory of more than one coastal State, it has been thought better not to draw up any rules regarding the drawing of the line of demarcation between the respective territorial seas in straits lying within the territory of more than one coastal State and of a width less than the breadth of the two belts of territorial sea.

The application of the article is limited to straits which serve as a passage between two parts of the high sea. It does not touch the regulation of straits which give access to inland waters only. As regards such straits, the rules concerning bays, and, where necessary, islands, will continue to be applicable.

PASSAGE OF WARSHIPS THROUGH STRAITS.

Under no pretext whatever may the passage even of warships through straits used for international navigation between two parts of the high sea be interfered with.

Observations.

According to the previous article the waters of straits which do not form part of the high sea constitute territorial sea. It is essential to ensure, in all circumstances, the passage of merchant vessels and warships through straits between two parts of the high sea and forming ordinary routes of international navigation.

DELIMITATION OF THE TERRITORIAL SEA AT THE MOUTH OF A RIVER.

When a river flows directly into the sea, the waters of the river constitute inland waters up to a line following the general direction of the coast drawn across the mouth of the river, whatever its width. If the river flows into an estuary, the rules applicable to bays apply to the estuary.

Appendix 3.

EXTRACT FROM THE PROVISIONAL MINUTES OF THE THIRTEENTH MEETING HELD ON THURSDAY, APRIL 3rd, 1930, AT 9.15 A.M.

(Not reproduced. See Minutes pages 123 to 125).

Appendix 4.

RESOLUTION CONCERNING THE CONTINUATION OF THE WORK OF CODIFICATION ON THE SUBJECT OF TERRITORIAL WATERS.

The Conference,

Notes that the discussions have revealed, in respect of certain fundamental points, a divergence of views which, for the present, renders the conclusion of a Convention on the territorial sea impossible, but considers that the work of codification on this subject should be continued.

It therefore :

(1) Requests the Council of the League of Nations to communicate to the Governments the articles annexed to the present resolution and dealing with the legal status of the territorial sea,[1] which have been drawn up and provisionally approved with a view to their possible incorporation in a general Convention on the territorial sea ;

(2) Requests the Council of the League of Nations to invite the various Governments to continue, in the light of the discussions of this Conference, their study of the question of the breadth of the territorial sea and questions connected therewith, and to endeavour to discover means of facilitating the work of codification ;

(3) Requests the Council of the League of Nations to be good enough to consider whether the various maritime States should be asked to transmit to the Secretary-General official information regarding the base-lines adopted by them for the determination of their belts of territorial sea ;

(4) Recommends the Council of the League of Nations to convene, as soon as it deems opportune, a new conference, either for the conclusion of a general Convention on all questions connected with the territorial sea, or even—if that course should seem desirable—of a Convention limited to the points dealt with in the annex.[2]

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[1] These articles are reproduced above in Appendix 1.
[2] See Appendix 1.

PUBLICATIONS OF THE LEAGUE OF NATIONS

Vol. I. Advisory Committee of Jurists. Documents presented to the Committee relating to Existing Plans for the Establishment of a Permanent Court of International Justice. (English and French texts) £3 5/- $13.00

Vol. II. Advisory Committee of Jurists. Procès-verbaux of the Proceedings of the Committee, June 16th to July 24th, 1920, with Annexes. (English and French texts) £3 10/- $14.00

Vol. III. Documents concerning the Action taken by the Council of the League of Nations under Article 14 of the Covenant and the Adoption by the Assembly of the Statute of the Permanent Court (not including Material collected for, or the Minutes of the Advisory Committee of Jurists). (English and French texts) £3 5/- $13.00

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Conference of States Signatories of the Protocol of Signature of the Statute of the Permanent Court of International Justice. Final Act of the Conference. (French and English texts). (Ser. L.o.N. P. 1926.V.24). 5*d.* $0.10

Conference of States Signatories of the Protocol of Signature of the Statute of the Permanent Court of International Justice. Report by M. Pilotti, Rapporteur, presented to the Conference on September 23rd, 1926. (French and English texts). (Ser. L.o.N. P. 1926.V.25) 3*d.* $0.05

Minutes of the Conference of States Signatories of the Protocol of Signature of the Statute of the Permanent Court of International Justice, held at Geneva from September 1st to 23rd, 1926. (Ser. L.o.N. P. 1926.V.26) 3/3 $0.80

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