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Summary record of the 259th meeting

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

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on which that point on the outer limit was situated. Naturally, a point on the outer limit would be at greater distances from points along the coast, other than the centre of its arc of circle.

61. Mr. ZOUREK inquired if the outer limit would take the form of a tangent or if it would be formed by a series of arcs of circles, as article 7 seemed to suggest.

62. Mr. SCELLE inquired whether the method recommended differed much from that suggested by Professor Gidel in his *Droit international public de la mer* and termed *ligne tangente à tous les arcs de cercle*.

63. Mr. FRANÇOIS, Special Rapporteur, said that the system of *lignes tangentes* was not favoured by seafaring men. A tangent was a straight line perpendicular to the radius of a circle. The "arcs of circles" system, on the other hand, produced an outer limit composed of a series of small arcs bulging outwards towards the sea. The committee of experts had given expressed in their report¹⁵ which he had reproduced in his draft article 7: "The limit of the territorial sea is formed by the most seaward arcs."

64. Mr. ZOUREK said that in the Fisheries case, the United Kingdom had admitted that the "arcs of circles" method was not an established rule of international law. In any case, that method only produced a partial simplification of the outer limit of the territorial sea and was awkward to apply in cases where there were islands off the coast. The net result of adopting such a method would be the creation of a number of pockets of high seas surrounded by the territorial sea—a situation likely to produce serious disadvantages for navigation.

65. The Commission should not attempt to impose a unified system on all States. There were several methods of determining the outer limits of the territorial sea, and States were free to choose whichever they considered best. The Special Rapporteur himself had only adopted the "arcs of circles" method on the recommendation of the committee of experts. In his earlier second report¹⁶ he had not advocated that method.

66. Mr. FRANÇOIS, Special Rapporteur, said that it was not only the opinion of the committee of experts that had swayed him. He had also been very much impressed by the pleadings in the Fisheries case. As international law now stood, it would appear that States were allowed to simplify the outline of the perimeter of the territorial sea instead of following the outline of the coast in all its sinuosities. It was desirable that some definite method should be laid down for that simplification.

67. Mr. SPIROPOULOS inquired whether Mr. Zourek had any alternative suggestion to offer.

68. Mr. ZOUREK said that a line parallel to the low-water line was conceivable in the case of a fairly straight coastline but that a line parallel to straight base lines would be appropriate in other cases.

69. Mr. FRANÇOIS, Special Rapporteur, said that the main purpose of article 7 was to make it clear that should a State employ the "arcs of circles" method when determining the outer limit of its territorial sea, it could not be accused of violating international law. The article made it clear that such a State was under no obligation to follow the outline of the coast in all its sinuosities. All seafaring men were in agreement that it was absolutely impracticable to draw the outer limit of the territorial sea so that it followed the coastline in all its sinuosities. And it was on the basis of the recommendation of experts who agreed with the view universally held by seafaring men that the article had been drafted by him in the form submitted.

The meeting rose at 1 p.m.

259th MEETING

Thursday, 1 July 1954, at 9.45 a.m.

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Chairman: Mr. A. E. F. SANDSTRÖM

Rapporteur: Mr. J. P. A. FRANÇOIS

Present:

Members: Mr. G. AMADO, Mr. R. CÓRDOVA, Faris Bey el-KHOURI, Mr. F. GARCÍA-AMADOR, Mr. S. HSU, Mr. H. LAUTERPACHT, Mr. R. PAL, Mr. C. SALAMANCA, Mr. G. SCELLE, Mr. J. SPIROPOULOS, Mr. J. ZOUREK.

Secretariat: Mr. Yuen-li LIANG (Director of the Division for the Development and Codification of International Law, and Secretary to the Commission).

¹⁵ *Ibid.*

¹⁶ *Op. cit.*, A/CN.4/61.

Régime of the territorial sea (item 2 of the agenda)
(A/CN.4/53, A/CN.4/61 and Add. 1, A/CN.4/71
and Add. 1 and 2, A/CN.4/77)¹ (continued)

CHAPTER II : LIMITS OF THE TERRITORIAL SEA
(continued)

Article 7 : Outer limit of the territorial sea
(A/CN.4/77)² (continued)

1. Mr. HSU said that the method recommended by the Special Rapporteur seemed to him more scientific than the method employed in the past, for the drawing of arcs was based on a point and not on a short base line.

2. Mr. CORDOVA said that the rule as such was really given in full in the first sentence of the article; he proposed that the other two sentences should form part of the comment to the article.

3. Mr. PAL said, in support of that proposal, that the arcs of circles method was of interest only in cases where the territorial sea was not delimited by the straight base line method. In the latter case it was easier to adopt a line parallel to the base line as the outer limit of the territorial sea.

Mr. Córdova's proposal was adopted unanimously.

Article 7, as so amended, was adopted unanimously.

Order of business

4. The CHAIRMAN said that discussion of article 8 (bays) and related articles might require a great deal of time. The Commission had only three more weeks before the preparation of the report on the session. So that the Commission could accomplish a practical, albeit a partial, result and before long consider the remaining items on its agenda, he proposed that consideration of those articles should be deferred.

5. Mr. FRANÇOIS, Special Rapporteur, supported the Chairman's proposal. It was by no means generally admitted that the questions of bays (article 8), groups of islands (article 12), straits (article 14) and the delimitation of the territorial sea at the mouth of a river (article 15), were not connected with the breadth of the territorial sea. Accordingly, for the time being only less controversial articles should be studied.

6. In that way, at its seventh session the Commission would only have the breadth of the territorial sea to consider, after which it would be able to submit a complete draft regulation to the General Assembly.

7. Faris Bey el-KHOURI said there would be little point in postponing until the seventh session the study of articles connected with the breadth of the territorial sea unless in the meantime the Commission could expect to receive fresh information—for example, comments by Governments on the breadth of the territorial sea.

8. Mr. SPIROPOULOS thought that Governments would only express an opinion if a complete draft were submitted to them. On the other hand, if the Commission wished to finish its study of the report on the territorial sea, it would probably not have the time to consider the other items on its agenda, or only time to do so very superficially.

9. Mr. CORDOVA did not agree with the proposal of the Chairman and Mr. François. If the Commission was unable at the current session to complete the study of the régime of the territorial sea, which had been on its agenda for several years, one might well ask when it would do so. He therefore proposed that the study should be completed before anything else and a full report submitted to the General Assembly, even if the Commission failed to reach agreement on all the articles.

10. Mr. AMADO supported that proposal.

11. Mr. SCELLE did not think fragmentary reports should be submitted to the General Assembly. The Commission should complete the study it had begun and should first consider the articles on which agreement seemed most likely.

12. Mr. LIANG, Secretary to the Commission, referred to General Assembly resolution 374 (IV) which, because the questions of the régime of the high sea and the régime of the territorial sea were closely connected, had recommended the Commission to give priority to the latter question as well. In order to avoid at the next session the difficulties which had been encountered during the current session, the Commission might send out a questionnaire to Governments concerning the breadth of the territorial sea. Governments had not had an opportunity of commenting on the question since the codification conference of 1930.

13. Mr. GARCÍA-AMADOR added that, pursuant to the resolution mentioned by the Secretary to the Commission, the General Assembly was waiting to receive the draft relating to the territorial sea before considering the draft articles concerning the continental shelf, the fisheries and the contiguous zone submitted to it by the Commission in 1953.

14. Mr. ZOUREK recalled that already in 1952 he had proposed that a preliminary questionnaire relating to the most important matters affecting the territorial sea should be sent out to Governments; he thought such a questionnaire might still be sent.

15. Mr. HSU saw no need for such a questionnaire, but thought that the Commission could complete its study of the report on the territorial sea at the current session if it set its mind to it.

16. The CHAIRMAN noted that the members of the Commission were generally agreed that the study of article 8 and of the articles directly or indirectly connected with the question of the breadth of the territorial sea should be deferred for the time being.

¹ *Vide supra*, 252nd meeting, para. 54 and footnotes.

² *Vide supra*, 258th meeting, footnote 13.

17. He put to the vote Mr. Córdova's proposal that those articles should be considered immediately after the articles having no bearing on the breadth of the territorial sea had been discussed.

The proposal was adopted by 8 votes to 1, with 4 abstentions.

Article 9: Ports
(*article 7 of A/CN.4/61*)³

18. Mr. FRANÇOIS, Special Rapporteur, explained that the article (which corresponded to article 7 in his second report, document A/CN.4/61) was identical with the corresponding article prepared at the 1930 Codification Conference.

19. Mr. CORDOVA proposed that the words "the breadth of" in the first line of the article should be deleted.

It was so agreed.

20. Mr. LAUTERPACHT asked if jetties stretching out to sea for seven or eight miles were to be considered as permanent installations. The same question arose in connexion with the dykes which according to some reports the French Government was planning to build in the Bay of Mont Saint Michel to harness the energy of the tides and which would be some twenty miles in length.

21. Mr. SCELLE pointed out that the case of jetties was different from that of dykes. Jetties were used for the loading and unloading of cargo and for sheltering vessels; they were part of the harbour works. The dyke referred to by Mr. Lauterpacht was still only a project mentioned by the French Government in connexion with the Minquiers and Ecrehos case which had been before the International Court of Justice in 1953;⁴ in cases, however, where dykes were already being used to protect the coast and where they could be formed into polders, as at some points of the Dutch coast, they should, he thought, be taken into consideration in determining the limits of the territorial sea.

22. Mr. CORDOVA said that that should not apply to jetties built by private companies for their own particular needs.

23. Mr. FRANÇOIS, Special Rapporteur, said that dykes used for the protection of the coast constituted a separate problem and did not come under either article 9 (ports) or article 10 (roadsteads); roadsteads were in fact merely stretches of water where ships anchored.

24. Mr. LAUTERPACHT was glad to hear that according to the Special Rapporteur dykes should be

studied apart and dealt with in a separate article. As a precautionary measure in connexion with jetties, in article 9 the word "outermost" should perhaps be deleted and the words "stretching out to sea to a distance of three or four miles" inserted after the words "permanent harbour works".

25. Mr. SCELLE proposed that after the words "permanent harbour works" the words "which are an integral part of a port system" should be inserted. The expression was preferable to the shorter term "harbour works" which referred primarily to buildings, cranes, and more generally to movable property and small structures used in ports. In order to avoid repetition the words "in front of ports" at the beginning of the article should be deleted.

26. Mr. AMADO said it should indeed be stressed that a port constituted a legal entity. In order to make that clear he proposed that the words "in front of ports" should be retained.

27. Mr. ZOUREK said that the words "integral part of a port system" were not at all clear. Were they intended to include lighthouses, some of which served to indicate the entrance channel into ports, while others were far out at sea?

28. Mr. SPIROPOULOS said that if a lighthouse were connected with the coast, it was an integral part of the port system. It was impossible to find a formula which covered all cases; the one suggested by Mr. Scelle was substantially in keeping with the conventional meaning of the term "port".

29. Mr. FRANÇOIS, Special Rapporteur, said that the case of lighthouses situated off the coast would be considered in connexion with artificial islands.

30. The CHAIRMAN put to the vote Mr. Amado's proposal that the words "in front of ports" should be retained.

The proposal was rejected by 8 votes to one, with 4 abstentions.

31. The CHAIRMAN put to the vote Mr. Scelle's proposal that the words "which form an integral part of the port system" (*qui font partie intégrante d'un système portuaire*) should be inserted after the words "harbour works".

The proposal was adopted by 6 votes to 2, with 5 abstentions.

32. The CHAIRMAN put to the vote article 9 as amended, without prejudice to any drafting alterations by the Drafting Committee, within the limits of its competence, especially in respect of the English wording.

Article 9 as amended was adopted by 6 votes to none, with 5 abstentions.

³ Article 9 read as follows:

"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."

⁴ Cf. *I.C.J. Reports 1953*, p. 71.

*Article 10: Roadsteads (article 8 of A/CN.4/61)*⁵

33. The CHAIRMAN invited debate on article 10, the text of which was identical with that of article 8 of the second report. A roadstead was an expanse of water bordering on a coast and used as an anchorage by vessels which could not come in closer to that coast.

34. Mr. FRANÇOIS, Special Rapporteur, drew attention to the comment attached to the article in his second report.⁶ He added that the solution adopted at The Hague in 1930, whereby roadsteads were deemed to be part of the territorial sea, had not fully satisfied coastal States, because the latter would be unable to enforce their administrative regulations in the waters in question. If, on the other hand, roadsteads were to be treated as internal waters, the normal consequence would be that they would be surrounded by a new belt of territorial sea. Yet a third solution would be to assimilate roadsteads to internal waters, while explicitly stipulating that those waters were not surrounded by a new belt of territorial sea.

35. Mr. LAUTERPACHT pointed out that article 10 did not provide for the case in which a roadstead was wholly within internal waters.

36. Mr. SPIROPOULOS said that, in such a case, it was so obvious that the roadstead was part of internal waters that it was not even necessary to say so expressly. The only question which arose was whether, apart from such cases, roadsteads were to be part of the territorial sea or of the high seas. Since, however, the coastal State had to have certain rights of inspection over ships anchoring in such a roadstead, the waters in question should be part of the territorial sea.

37. Mr. FRANÇOIS, Special Rapporteur, said it was extremely for a roadstead to be situated entirely outside the territorial sea. However, in order to provide for such an exceptional case, the words "or wholly" might be inserted after the words "situated partly". Mr. Lauterpacht's question might be referred to the Drafting Committee.

38. Mr. ZOUREK pointed out that the debate had been concerned, until then, with exceptional cases. Normally a roadstead was situated in front of a port, constituting a sort of entrance to it. Several authors actually held that the term "port" included also roadsteads of that type. It would therefore be illogical if roadsteads were governed by a régime different from that applicable to ports.

⁵ Article 10 read as follows :

"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."

⁶ A/CN.4/61 in *Yearbook of the International Law Commission, 1953*, vol. II.

39. Mr. SPIROPOULOS said that the rights vested in the coastal State with respect to territorial waters were amply sufficient to cover the case of roadsteads. An enclave of internal waters would be quite artificial, even where the roadstead was the extension of a port. A provision which treated roadsteads as part of the territorial sea in any case constituted an exception; if a further exception were to be made of the case of a roadstead which constituted the entrance to a port, the Commission's draft regulation would become too complicated.

40. Mr. CORDOVA pointed out that the Special Rapporteur's draft regulation did not contain any article dealing with the régime of the waters of a port. Only the comment to article 9 dealt with that matter.⁷

41. Mr. AMADO said that never before had it been suggested that roadsteads should be treated as internal waters.

42. Mr. ZOUREK said that the whole question had become complicated precisely because it had been proposed that roadsteads and territorial waters should be treated alike. In answer to the Chairman he announced that he would not submit a formal amendment on the question of roadsteads.

43. Mr. LAUTERPACHT inquired whether the last sentence of the article meant that the coastal State should indicate on its charts the limits of roadsteads or whether some special notification was required.

44. Mr. FRANÇOIS, Special Rapporteur, said that was a question of form.

45. The CHAIRMAN suggested that the last sentence of the article should be redrafted by the Drafting Committee. He put to the vote article 10 as amended by the addition of the words "or wholly". The Drafting Committee would consider whether roadsteads situated wholly within internal waters should be governed by the régime applicable to such waters, and would also redraft the last sentence of the article.

Article 10, as so amended, was adopted by 12 votes to none, with 1 abstention.

Article 9: Ports (resumed from para. 32)

46. The CHAIRMAN invited debate on article 9; perhaps the article should specify the character of the waters of the port.

47. Mr. FRANÇOIS, Special Rapporteur, proposed that the following sentence should be added at the end of the article: "The waters of a port, as far as a line drawn between the outermost fixed works, constitute the inland waters of the coastal State." The sentence was taken from the comment to the article.⁸

The proposal was adopted unanimously.

Article 9, as amended, was adopted unanimously.

⁷ See comment to article 7 in A/CN.4/61, *op. cit.*

⁸ *Ibid.*

*Article 11 : Islands (A/CN.4/77)*⁹

48. Mr. FRANÇOIS, Special Rapporteur, said that article 11 raised the delicate issue of artificial islands. The relevant report of the 1930 Codification Conference said on that point that the definition of the term "island" did not exclude artificial islands.¹⁰ On the other hand, article 6 of the draft articles which the Commission had adopted in 1953 on the subject of the continental shelf¹¹ provided that installations necessary for the exploration and exploitation of the continental shelf did not possess the status of islands; the coastal State was merely entitled to establish safety zones around them.

49. Mr. SCALLE said that perhaps the article might specify simply that artificial islands had no territorial sea of their own.

50. Mr. CORDOVA inquired what was the difference between artificial islands and "groups of dwellings built on piles erected in the sea" which were deemed to be islands according to the last sentence of article 11.

51. Mr. FRANÇOIS, Special Rapporteur, said that the question had arisen recently in Indonesia. Real villages had been erected on piles in the high seas and the Indonesian Government wished to enforce its police regulations in those villages.

52. Mr. CORDOVA pointed out that artificial islands necessary for the exploitation of a continental shelf might also include dwellings. Under the last sentence of article 11 many States could only too easily widen their territorial sea unreasonably by building a few houses on piles.

53. Mr. SCALLE said that the last sentence of article 11 was unacceptable.

54. Mr. LAUTERPACHT said that the sentence in question was absolutely incompatible with article 6 of the draft articles relating to the continental shelf. Moreover, the Special Rapporteur's article 11 did not expressly regulate either the question of artificial islands or that of lighthouses. Both those questions were only dealt with in the comment to the corresponding article in the second report.¹²

The meeting rose at 1 p.m.

⁹ Article 11 read as follows :

"Every island has its own territorial sea. An island is an area of land surrounded by water which is permanently above high-water mark. Groups of dwellings built on piles erected in the sea are deemed to be islands."

¹⁰ *Acts of the Conference for the Codification of International Law*, vol. III: Minutes of the Second Committee (League of Nations Publication, V. Legal. 1930.V.16), p. 219. Also in A/CN.4/61, comment to article 9.

¹¹ See Report of the Commission on its fifth session, *Official Records of the General Assembly, Eighth Session, Supplement No. 9 (A/2456)* pp. 12-13. Also in *Yearbook of the International Law Commission, 1953*, vol. II.

¹² See A/CN.4/61, comment to article 9.

260th MEETING

Friday, 2 July 1954, at 9.45 a.m.

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Chairman : Mr. A. E. F. SANDSTRÖM

Rapporteur : Mr. J. P. A. FRANÇOIS

Present :

Members : Mr. G. AMADO, Faris Bey el-KHOURI, Mr. F. GARCÍA-AMADOR, Mr. S. HSU, Mr. H. LAUTERPACHT, Mr. R. PAL, Mr. G. SCALLE, Mr. J. SPIROPOULOS, Mr. J. ZOUREK.

Secretariat : Mr. Yuen-li LIANG (Director of the Division for the Development and Codification of International Law, and Secretary to the Commission).

Régime of the territorial sea (item 2 of the agenda) (A/CN.4/53, A/CN.4/61 and Add. 1, A/CN.4/71 and Add. 1 and 2, A/CN.4/77)¹ (*continued*)

CHAPTER II : LIMITS OF THE TERRITORIAL SEA
(*continued*)

Article 9 : Ports (article 7 of A/CN.4/61)
(*resumed from the 259th meeting*)²

1. Mr. LAUTERPACHT said that before taking up the discussion of article 11 relating to islands, he wished to refer to the Commission's decision on article 9 relating to ports. He had been under the impression that the article had been left open, but had since been given to understand that the Commission had adopted a substantive provision for it. If that was the case, the decision reached was in his opinion one-sided and regrettable. It was agreed that ports were incorporated in inland waters, but nothing had been said of the obligations of States from the point of view of the régime of the ports. The Geneva Convention of 1923 on the International Régime of Maritime Ports³ laid down that States should give access to their ports to foreign vessels on the same conditions as to their own vessels, or those of the most favoured State. The

¹ *Vide supra*, 252nd meeting, para. 54 and footnotes.

² *Vide supra*, 259th meeting, paras. 18-32 and 46-47.

³ *League of Nations Treaty Series*, vol. 58, p. 287.