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Summary record of the 163rd meeting

Topic:
Nationality including statelessness

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65. In conclusion, the draft convention prepared by the Commission must be based upon rules which would be acceptable to States and conceived in such a way as not to encroach upon matters which exclusively related to a country's domestic jurisdiction.

The meeting rose at 1.5 p.m.

163rd MEETING

Monday, 14 July 1952, at 2.45 p.m.

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Chairman : Mr. Ricardo J. ALFARO.

Rapporteur : Mr. Jean SPIROPOULOS

Present :

Members : Mr. Gilberto AMADO, Mr. Roberto CORDOVA, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi Hsu, Mr. Manley O. HUDSON, Faris Bey el-KHOURI, Mr. F. I. KOZHEVNIKOV, Mr. H. LAUTERPACHT, Mr. A. E. F. SANDSTRÖM, Mr. J. M. YEPES, Mr. J. ZOUREK.

Secretariat : Mr. Ivan S. KERNO (Assistant Secretary-General in charge of the Legal Department), Mr. Yuen-li LIANG (Director of the Division for the Development and Codification of International Law, and Secretary to the Commission).

Nationality, including statelessness (item 6 of the agenda) (A/CN.4/50) (*continued*)

SECTION VI OF ANNEX III: STATELESSNESS; POINTS FOR DISCUSSION (*continued*)

1. The CHAIRMAN invited the Commission to continue its consideration of Annex III to the special rapporteur's report on nationality, including statelessness (A/CN.4/50).

Point 18 (continued)

2. Mr. KOZHEVNIKOV said that he had already stated his view that statelessness was a matter which, in the main, fell within purely domestic jurisdiction, a sphere in which no interference was allowed by international law. On the other hand, as he had already indicated, certain acts carried out by States went beyond that framework and assumed a political character.

3. Mr. YEPES proposed that point 18 be replaced by the following text :

"No person shall be deprived of the nationality of a State when such person does not acquire the nationality of another State, except on the following grounds :

"(i) cancellation of naturalization obtained by fraud ;

"(ii) continuous residence of naturalized person abroad. For the purposes of this provision, continuous residence abroad shall be understood to mean unauthorised absence for at least two years from the country of adoption."

4. Mr. KERNO (Assistant Secretary-General) observed that Mr. Yepes' text differed from that of point 18 only by specifying a time-limit in sub-paragraph (ii) and by omitting sub-paragraph (iii).

5. Mr. el-KHOURI said he could accept point 18, but proposed that the words "(a)" and "or alternatively (b) except" be deleted, since clause (a) was procedural, and could govern all the grounds enumerated in sub-paragraph (i) to (iii).

6. Mr. CORDOVA was not in favour of allowing States to punish individuals by depriving them of their nationality. The inclusion of such a provision in a draft convention would imply approval of the principle.

7. He could not support clause (a), which would do nothing to guarantee the individual against arbitrary action by the State. Furthermore, it failed to take into account the case of an individual being deprived of his nationality by automatic operation of the law without any judicial process.

8. Mr. SANDSTRÖM said that if clause (a) was designed to cover the case of mass deprivation of nationality, he could not support it. On the other hand, if it was purely procedural there was no reason why it should not be accepted.

9. He doubted whether it was expedient for the Commission to attempt to draft a definite provision on the problem at the present stage, and he therefore proposed that the special rapporteur be requested to consider in detail the grounds on which persons were at present liable to deprivation of nationality, taking into account those listed on pages 140 and 141 of the Secretariat's *A Study of Statelessness* as having been provided in the laws of a number of States. The Commission might thus be furnished with more ample material for consideration at its next session.

10. Mr. CORDOVA said that he could support Mr. Sandström's proposal, provided the special rapporteur was requested to insert in the draft convention on the elimination of statelessness a provision to the effect that no person should be deprived of the nationality of a State when such person did not acquire the nationality of another State. That principle might be qualified by providing for certain exceptions in the draft convention, namely, that on the reduction of statelessness.

11. Mr. LAUTERPACHT considered that there was an encouraging degree of agreement on one of the two principal issues at stake. Some members, of whom he was one, held that no person should be deprived of the nationality of a State when such person did not possess or acquire the nationality of another State. Others, and their view was not so far removed as it would seem, considered that an exception should be made in respect of naturalized persons. The replies from governments analysed in the Secretary-General's report (E/2230-A/CN.4/56) on the problem of statelessness indicated that such exceptions were made in practice. Nevertheless, it should be asked whether minor exceptions, for example, the extremely rare cases of nationality acquired by fraud, were of sufficient weight to justify attenuating an important principle.

12. Mr. FRANÇOIS suggested that Mr. Lauterpacht was mistaken in thinking that there was a large measure of agreement in the Commission. Several members had indeed expressed opposition to his (Mr. Lauterpacht's) view.

13. Mr. CORDOVA pointed out that when naturalization had been obtained by fraud, it was erroneous to refer to its subsequent annulment as a form of deprivation of nationality, since, in such a case, no valid nationality had ever been acquired. The person in question would, he thought, recover his original nationality and no statelessness would therefore result. He cited in that connexion a hypothetical case of a Mexican citizen who had acquired United States nationality by naturalization. Should his naturalization be annulled on the ground that it was obtained by fraud, he would recover his Mexican nationality.

14. The ground given in sub-paragraph (ii) for deprivation of nationality seemed to him to be of minor importance, and not to justify an exception to the general principle.

15. The CHAIRMAN said that a fundamental question before the Commission was whether it approved the principle that no State might deprive a person of his nationality unless he already possessed, or acquired, another nationality. He would accordingly put that principle to the vote.

The principle was rejected by 7 votes to 3 with 1 abstention.

16. The CHAIRMAN then put to the vote the proposal made by Mr. Yepes and Mr. el-Khoury.

Mr. Yepes' text to replace point 18 was rejected by 7 votes to 4, with 1 abstention.

Mr. el-Khoury's amendment to point 18 was rejected by 6 votes to 5, with 2 abstentions.

17. Mr. YEPES said that Mr. Sandström's proposal, which was tantamount to recognition of a right contrary to the Charter of the United Nations, contrary to the Universal Declaration of Human Rights and contrary to everything which the Commission had so far been attempting to do, must be fully discussed before being put to the vote.

18. The CHAIRMAN explained that in accepting Mr. Sandström's proposal the Commission would not be adopting any principle, but merely instructing the special rapporteur to study in detail the grounds on which deprivation of nationality was imposed.

19. Mr. KERNO (Assistant Secretary-General) remarked that the special rapporteur was not being asked to make positive recommendations. The action proposed by Mr. Sandström would therefore not prejudice the principle.

20. Mr. SANDSTRÖM endorsed the remarks of the Assistant Secretary-General.

21. Mr. AMADO considered point 18 to be more or less satisfactory. The application of the principle that no one should be deprived of his nationality unless he had acquired another would be restricted to a far greater extent if the grounds enumerated on pages 140 and 141 in the publication *A Study of Statelessness* were accepted.

22. Mr. LAUTERPACHT agreed with the Assistant Secretary-General that the adoption of Mr. Sandström's proposal would in no way prejudice the principle at issue since, after further study of the question, the special rapporteur might possibly decide that none of the grounds on which persons were deprived of nationality justified derogation from the principle that statelessness should be eliminated.

23. He had some doubts, however, as to the scope of Mr. Sandström's proposal. It was to be assumed that the special rapporteur had already considered such grounds as those enumerated in the publication *A Study of Statelessness* and had concluded that only those he had listed under point 18 merited consideration. Perhaps, therefore, further examination of the problem might be limited to the latter.

24. Mr. AMADO could not understand why those members who were anxious to secure the elimination of statelessness should suppose that provision for exceptions such as were laid down in point 18 would seriously impair their purpose. Certain exceptions to a general rule were inevitable, and should not give rise to substantial objections.

25. Mr. FRANÇOIS pointed out that those members who supported Mr. Sandström's proposal did so because they felt dissatisfied with point 18 and considered that the matter had not been fully thrashed out. They were therefore in favour of the special rapporteur studying in greater detail grounds other than those listed in his report.

26. Some members had based their view that States should not have the right to deprive persons of their nationality on the argument that other sanctions could be applied. He could not agree with that contention, partly because it would not always be possible to apply sanctions against a person who had permanently expatriated himself. The Commission should also consider the case of a national who had entered the service of another State, and who had thus severed the

essential link which bound the national to the state of his nationality.

27. Mr. ZOUREK did not consider the grounds enumerated under point 18 to be satisfactory. For example, why should special treatment be meted out to naturalized persons, whose suitability to acquire a nationality was examined with such scrupulous attention? As he had already had occasion to point out, acquisition of nationality by accident of birth was no guarantee of loyalty. Other grounds for deprivation of nationality had to be considered and the Commission would have to have a far greater volume of material before it could take any decision of principle. He accordingly supported Mr. Sandström's proposal.

28. Mr. SPIROPOULOS said that the Commission should proceed very carefully. After the rejection of Mr. Yepes' proposal a tendency was manifesting itself to reduce to the utmost the number of exceptions to the principle that no person should be deprived of his nationality. Of course, loss of nationality in countries applying the *jus soli* principle, such as the United States of America and Latin-American countries, was far less important than, for example, in European countries where the principle of *jus sanguinis* prevailed.

29. A draft convention which did not allow of exceptions to the principle would have no chance of acceptance by the second category of States. Moreover, it was not always possible to apply other sanctions than that of deprivation of nationality against persons permanently resident abroad. Every State, like a private association, must have the right to expel one of its members.

30. Mr. YEPES suggested that the parallel between the State and private associations was not so close as Mr. Spiropoulos supposed. Deprivation of nationality violated an essential human right; and it was neither expedient nor right to allow States to cast out undesirable characters who would have to be admitted by some other State.

31. Confusion between citizenship and nationality must be avoided. Many of the acts which were punished by deprivation of nationality should rather be punished by deprivation of citizenship, an acquired right which the State could either limit or take away altogether. Such, for example, was the proper sanction against acts prejudicial to public security.

32. Mr. HSU was not in favour of recognition, in either of the two draft conventions to be prepared by the special rapporteur, of the right of States to deprive persons of their nationality. There was a substantial measure of agreement in favour of Mr. Sandström's proposal, and the Commission should allow the special rapporteur some latitude in pursuing his study of the problem.

33. Mr. LIANG (Secretary to the Commission) felt that there was some force in Mr. Yepes' argument that the Commission should consider certain questions of principle before taking a decision on Mr. Sandström's

proposal. That was desirable in order to indicate to the special rapporteur the trend of thought in the Commission.

34. Referring to Mr. Córdova's contention that cancellation of naturalization which had been acquired by fraud would not lead to statelessness because the original nationality would automatically be recovered, he doubted whether that would prove to be the case universally. For example, under Chinese law, a Chinese national desiring to acquire another nationality had to obtain an expatriation permit and, once that permit had been issued, he could not recover his Chinese nationality without instituting proceedings for naturalization.

35. Mr. KOZHEVNIKOV agreed with Mr. Yepes that a clear distinction must be made between citizenship and nationality. In some multi-national States the same rights of citizenship were enjoyed by all. In others, there were nationals who were not citizens. Some members were apparently referring to citizenship and not nationality.

36. Mr. LAUTERPACHT said that he would find it difficult either to support or to oppose Mr. Sandström's proposal which, though eminently reasonable, had certain drawbacks. For the special rapporteur to consider other grounds on which persons were liable to be deprived of their nationality, once he had decided to put forward only the three mentioned in point 18, might be a work of supererogation.

37. Turning to the arguments advanced by Mr. Spiropoulos, he pointed out that the United Kingdom, which applied a combination of the principles of *jus soli* and *jus sanguinis*, did not enforce deprivation of nationality as a penalty. Nor did France, except in the case of a person already possessing another nationality who behaved in a manner inconsistent with French national interests. Deprivation of nationality as a penalty did not exist in many countries.

38. Mr. Spiropoulos had also raised a wider issue and had contended that a State, being an association, was entitled to expel one of its members who acted contrary to the nature and spirit of such association. It should be remembered, however, that nationality was not a favour conferred by the State, but a function which the State performed within the framework of international law. Nationality was a link between the individual and the benefits which international law conferred upon him. There was a clear element of exaggeration in the argument that the State was an association of like-minded persons.

39. He did not believe that the Commission need spend any more time in discussing the merits of the grounds on which States might deprive persons of their nationality. Few of them would stand the challenge of reason, expediency or public sentiment, which was increasingly in favour of eliminating statelessness.

40. Mr. SANDSTRÖM observed that, since cases of nationality being acquired by fraud were so rare, the Commission should devote itself rather to the other

grounds on which far more persons were rendered stateless.

41. Mr. AMADO said that the wording of point 18 in the special rapporteur's report was perfectly clear and precise, and in his view, struck a happy compromise between the extreme views advanced during the discussion by various members of the Commission. Mr. Sandström's proposal, on the other hand, would give the special rapporteur little in the way of practical guidance.

42. Under Brazilian law no person could be deprived of Brazilian nationality unless he acquired the nationality of another State or unless he was convicted of treasonable activities against the State. The loss of political and civic rights was a question quite distinct from that of the loss of nationality.

43. After further discussion, the CHAIRMAN put Mr. Sandström's proposal to the vote.

Mr. Sandström's proposal was adopted by 8 votes to 1, with 3 abstentions.

Point 19

44. Mr. HUDSON said that, in accordance with a suggestion made by the Chairman, he wished to delete the introductory phrase from point 19. There was also an error in the final sentence. The correct text of point 19 should therefore read as follows:

"The following rules shall be applicable with reference to territory over which the sovereignty is transferred:

"(i) If the transferring State continues to exist, no person inhabiting the transferred territory shall lose his nationality as a consequence of the transfer, unless he acquires the nationality of another State;

"(ii) The State to which the territory is transferred shall confer its nationality on the persons inhabiting the territory, subject to their option to retain the nationality of the transferring State if the latter continues to exist;

"(iii) The State to which the territory is transferred may not impose its nationality against their will on persons who have previously inhabited the transferred territory but have established their habitual residence elsewhere.

"[Alternative—Leave this whole matter to be dealt with by treaty.]"

45. Mr. KERNO (Assistant Secretary-General) suggested that it would be logical to take sub-paragraph (ii) before sub-paragraph (i), since the general rule was that the inhabitants went with the territory.

46. The CHAIRMAN invited comments on sub-paragraph (ii).

47. Replying to a question by Mr. CORDOVA, Mr. HUDSON confirmed that if the principle contained in sub-paragraph (ii) was approved and incorporated in a convention, it would be binding on all States which

acceded to the convention and that such States would not be free to make contrary arrangements in the treaty providing for transfer of territory. In other words, the Commission must choose between the principle contained in sub-paragraph (ii) and the alternative principle that the whole matter of change of nationality consequent upon the transfer of territory be left to be dealt with by treaty.

48. Mr. CORDOVA pointed out that if the Commission left the whole matter to be dealt with by treaty, the present situation would not have been improved.

49. Mr. SANDSTRÖM said that in his view the whole matter should be dealt with by treaty.

50. The CHAIRMAN put the rule in sub-paragraph (ii) to the vote.

That rule was approved by 11 votes to 1, with 1 abstention.

51. The CHAIRMAN invited comments on sub-paragraph (i) of point 19.

52. Mr. CORDOVA pointed out that if, by virtue of the proviso contained in sub-paragraph (ii), all or a large proportion of the inhabitants of a transferred territory opted to retain the nationality of the transferring State, the State to which the territory was transferred would have within its borders an alien minority. Some proviso should therefore also be included in sub-paragraph (i).

53. Mr. LAUTERPACHT pointed out that if, in such cases, an individual opted to retain the nationality of the transferring State, the State to which the territory was transferred could expel him.

54. Mr. HUDSON reminded the Commission that it was not adopting legal texts but only approving principles.

55. The CHAIRMAN put to the vote the rule contained in sub-paragraph (i).

The rule contained in sub-paragraph (i) was approved by 11 votes to 1, with 1 abstention.

56. The CHAIRMAN invited comments on sub-paragraph (iii).

57. Mr. LAUTERPACHT said that the principle contained in sub-paragraph (iii) was a well-established one, which would be acceptable to most countries, but it was not directly germane to the question of statelessness. Such a rule should properly belong to the codification of the law of nationality, and should have no place in a draft convention for the reduction of statelessness.

58. Mr. SANDSTRÖM agreed with Mr. Lauterpacht, but suggested that the Commission should make clear in its report that it had not overlooked the question, but merely felt it would be inappropriate to refer to it in a convention whose aim was the reduction of statelessness.

59. Mr. LIANG (Secretary to the Commission) felt that the question dealt with in sub-paragraph (iii) would be highly pertinent to the work of codifying nationality laws, which he hoped the Commission would one day take up, but that it lay quite outside the field of statelessness, properly speaking.

On the understanding that the Commission's report would indicate that the Commission had considered the question, it was agreed, by 8 votes to none, with 2 abstentions, that the special rapporteur be requested not to devote any further attention to the question dealt with in sub-paragraph (iii).

60. Mr. ZOUREK drew attention to the paragraph in section II, 4(a) in the special rapporteur's report, reading as follows:

"After the Second World War, nationality was withdrawn *en masse* from persons of German and Hungarian races by Czechoslovakia and from persons of German race by Poland. Persons of German race were expelled to Germany under the Potsdam Agreement."

61. In point of fact, at the time of the occupation of Czechoslovakia by Nazi Germany in 1938 and 1939, almost all persons of German race had been given German nationality. When such persons had been deprived of Czechoslovak nationality after the Second World War, they had therefore acquired another nationality. Moreover, the law in question had provided that they could retain Czechoslovak nationality if they could furnish proof that they had remained loyal to Czechoslovakia or that they had played an active part in the allied struggle against Nazi Germany.

62. The CHAIRMAN said that the correction made by Mr. Zourek would be noted.

63. The Commission had now completed its discussion of the nineteen points contained in Section VI of Annex III to the special rapporteur's report, and the votes it had taken would serve as guidance for the special rapporteur in drafting conventions for presentation to the Commission at its next session, in accordance with the proposal made by Mr. Sandström and adopted at the 160th meeting.¹

Other points for discussion

64. Mr. LAUTERPACHT asked for confirmation of the fact that the Commission did not wish a convention to be drafted with a view to reducing existing cases of statelessness. In his view, that decision was correct, because, although the reduction of such existing cases of statelessness was an important and urgent problem, it was primarily one of a political nature and probably lay outside the Commission's field of work, which was the progressive development and codification of international law.

65. Mr. CORDOVA felt that, even if the Commission could hope for little practical success when dealing with

what was primarily a political problem, it would be subjected to much criticism if it did not at least consider the problem of reducing existing cases of statelessness. Resolution 319 B III (XI) of the Economic and Social Council had not, in his view, distinguished between existing cases of statelessness and cases arising in the future.

66. Mr. HSU agreed that the Commission should at any rate indicate how cases of existing statelessness could be reduced by juridical means.

67. The CHAIRMAN said that points 4 to 8 of the points for discussion contained in Section VI of Annex III to the special rapporteur's report related to the reduction of existing statelessness. Of those points, the Commission had discussed only point 8, on which it had decided to express no opinion. Points 4 to 7 appeared in the main to be limited to statements of fact, and as such had not been thought to provide a suitable basis for discussion.

68. Mr. KERNO (Assistant Secretary-General) thought that the only question in those four points which the Commission could usefully discuss was that contained in point 7, namely, whether any recommendations could be made similar to those contained in the resolution of the Economic and Social Council already referred to and in Article 34 of the 1951 Convention relating to the Status of Refugees.²

69. Mr. SANDSTRÖM felt that if the Commission could make useful recommendations there was no reason why it should not do so. In the circumstances, however, it could not add much to the recommendations already adopted.

70. Mr. ZOUREK recalled that the Commission had decided to defer a vote on point 1, which read "It is difficult to envisage any measures which would wholly eliminate the statelessness of presently stateless persons", until it had discussed the other points.³ The votes which had been taken on the other points might, however, make a vote on point 1 appear unnecessary.

71. Mr. HUDSON drew attention to the fourth paragraph of the preamble to Economic and Social Council resolution 319 B III (XI), in which the Council pointed out that it was necessary "both to reduce the number of stateless persons and to eliminate the causes of statelessness". The reference to reduction of statelessness might be interpreted as covering present and future cases.

72. It would be noted, however, that the various suggestions for reducing the number of existing cases of statelessness contained on page 168 of *A Study of Statelessness* (*op. cit.*) were all in the nature of recommendations to governments, and he doubted whether it was the Commission's task to make such recommendations. He had given much thought to devising other means for reducing existing statelessness, or for

¹ See summary record of the 160th meeting, paras. 32—45.

² United Nations Publication, Sales No. 1951. IV. 4.

³ See summary record of the 158th meeting, para. 46.

eliminating it, but had come to the conclusion that no attempt was likely to meet with success.

73. Mr. KERNO (Assistant Secretary-General) pointed out that, on the same page of *A Study of Statelessness*, the Secretary-General had expressed the view that governments could apply certain of the remedies he had proposed as a means of reducing existing statelessness without the conclusion of international agreements, and had continued: "In other cases either general or special agreements would be necessary. In almost all cases, however, the desired result would be attained with much more certainty through agreements."

74. Mr. LAUTERPACHT pointed out, with regard to that part of the Council's resolution referred to by Mr. Hudson, that if the causes of statelessness were eliminated, there would obviously be no need to reduce the number of cases of statelessness arising in the future. It seemed obvious, therefore, that the Council had been referring to the necessity of reducing the number of cases of statelessness already existing. To that end, however, it had, in the first and second operative paragraphs of the same resolution, made a number of recommendations to States. With reference to the International Law Commission, it had limited itself to urging that the Commission prepare at the earliest possible date a draft international convention, or conventions, for the elimination of statelessness.

75. Although he was still doubtful about the possibility of devising juridical measures for the reduction of existing statelessness, the question should in any case be mentioned in the Commission's report.

76. Mr. SPIROPOULOS felt that the Commission should bear in mind the fact that, when it had decided to take up the topic of nationality including statelessness, it had regarded the task as one of codification. The Economic and Social Council had made a general request to the Commission; it had not requested it to consider what was, as had been pointed out, a purely political problem involving no complicated legal issues.

77. Mr. HSU pointed out to Mr. Spiropoulos that at the very outset of its consideration of item 6 of its agenda, the Commission had decided to deal with the question of statelessness apart from that of the codification of the law of nationality.

78. Mr. AMADO said that all members recognized that the question of refugees was an urgent and important humanitarian problem. On the other hand, all countries were already giving attention to it as such. As Mr. Spiropoulos had pointed out, the legal problems involved were simple. The Commission had not been asked to consider that question and he did not see how it could make any useful recommendations concerning it.

79. Mr. LAUTERPACHT said that, to simplify the discussion, and because the special rapporteur had expressed no strong views on the question, he would propose that the Commission request the special rapporteur to give further consideration to the possibility

of reducing existing cases of statelessness by juridical means.

Mr. Lauterpacht's proposal was rejected by 5 votes to 4, with 3 abstentions.

80. The CHAIRMAN stated that the Commission had completed, for the present session, its consideration of item 6 of the agenda.⁴

The meeting rose at 6.5 p.m.

⁴ See however, summary record of the 172nd meeting, paras. 62—67.

164th MEETING

Tuesday, 15 July 1952, at 9.45 a.m.

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Chairman: Mr. Ricardo J. ALFARO.

Rapporteur: Mr. Jean SPIROPOULOS

Present:

Members: Mr. Gilberto AMADO, Mr. Roberto CORDOVA, Mr. J. P. A. FRANÇOIS, Mr. Shushi HSU, Mr. Manley O. HUDSON, Faris Bey el-KHOURI, Mr. F. I. KOZHEVNIKOV, Mr. H. LAUTERPACHT, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCELLE, Mr. J. M. YEPES, 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 5 of the agenda) (A/CN.4/53)

1. The CHAIRMAN invited the Commission to pass to the consideration of item 5 of the agenda, relating to the régime of the territorial sea, and of the report (A/CN.4/53) thereon prepared by the special rapporteur, Mr. François.

GENERAL

2. Mr. FRANÇOIS, introducing his report, said it was most opportune that the Commission should be giving it a first reading at the present session, since the question of the régime of the territorial sea was closely connected with those of the régime of the high seas and of the continental shelf, which were to be taken up again at the fifth session.