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Summary record of the 164th meeting

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

Extract from the Yearbook of the International Law Commission:-
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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 CÓRDOVA, 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. 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.

3. His task had been facilitated by the work done at the Conference for the Codification of International Law held at The Hague in 1930. It would be remembered that it had then been decided that it would be impossible to formulate a draft convention on the subject because of the wide divergencies of view on the breadth of the territorial sea. On all other points there had been virtual agreement. Taking as a basis the work of The Hague Conference, he was submitting a provisional draft regulation consisting of twenty-three articles, including one on the breadth of the territorial sea. As the Commission had provisionally allotted only four meetings for the consideration of the problem, it would probably be impossible for all twenty-three articles to be taken up. He would accordingly suggest that for the present the Commission confine itself to four main points.

4. The first was the juridical nature of the authority exercised by the coastal state over the territorial sea. He did not envisage that that should take up much time since, judging from the discussions on the continental shelf, there seemed to be a wide measure of agreement among members on that point.

5. The second point was the breadth of the territorial sea, and there the Commission would have to decide whether existing international law recognized a fixed limit, and if not, whether it could be determined *de lege ferenda.*

6. The third point related to the base line from which the breadth of the territorial sea should be measured. That problem had considerable topical interest in view of the judgment rendered by the International Court of Justice on 18 December 1951 in the *Fisheries Case* between the United Kingdom and Norway.[1] A question of principle would arise there as to whether the Commission was bound by a decision of the Court. That issue had been examined at the previous session in connexion with a discussion of the *Lotus Case,* and the Commission had decided that it was not bound by a decision of the Permanent Court of International Justice.[2] It should be borne in mind, however, that the circumstances were somewhat different, inasmuch as the *Lotus Case* had occurred twenty years ago and the division had been very close. In the *Fisheries Case* between the United Kingdom and Norway, on the other hand, the judgment had been approved by a substantial majority of the Court.

7. The fourth point was the delimitation of the territorial sea of two adjacent States, and was closely connected with the delimitation of the continental self. As numerous governments had indicated in their replies on the continental shelf, the delimitation of the latter was impossible without delimitation of the territorial sea.

8. The points he had enumerated were dealt with in articles 2, 4, 5 and 13 of his draft regulation, and he suggested that there was no need for the Commission to hold a general discussion on the report. It might proceed immediately to the consideration of those four articles, since that would afford members an opportunity of raising all general points of major importance. He would ask, if members had no opportunity of commenting at the present session on points of lesser importance, that they submit their observations on such points to him in writing so that he might take them into account in preparing his second report for submission at the fifth session.

9. Mr. KOZHEVNIKOV said that he would make no secret of his impression that some members were attempting to speed up the Commission's work at all costs, regardless of its quality. The pace at which the Commission was working was not consonant with the gravity of the problems before it. Decisions were sometimes taken precipitously without prior discussion, and it often happened that the Commission was unable subsequently to disentangle what it had adopted at a preceding meeting. He wondered how science would progress if matters were decided by simple vote; it could not be denied that the Commission sometimes took what seemed to be almost mechanical votes on very important matters.

10. He was very much concerned that the report under consideration should not be dealt with in that way, and accordingly proposed the following resolution:

> "WHEREAS the report on the régime of the territorial sea reached members of the Commission relatively late; calls, by virtue of its importance, for the most serious study; is of undoubted interest to all States, and especially to those with a seaboard and navy; and, moreover, clearly requires substantive modification,
>
> "Therefore the INTERNATIONAL LAW COMMISSION, without having discussed the substance of the said report at its present session, INSTRUCTS the Secretariat of the United Nations to transmit, in accordance with the Statute of the Commission, the report and draft regulation on the régime of the territorial sea to the governments of all Members of the United Nations for their observations, and
>
> "DECIDES to consider such observations and replies of governments, together with said report and draft regulation, at its next session."

11. Once the Commission had been supplied with such additional material it could fruitfully deal with the report in a manner appropriate to its responsibilities.

12. Mr. LIANG (Secretary to the Commission) pointed out that the method adopted by the Commission for dealing with the problem of the régime of the territorial sea was in conformity with article 19 of its Statute. It was for the Commission to decide whether, in accordance with article 19, paragraph 2, governments should be requested "to furnish the texts of laws, decrees, judicial decisions, treaties, diplomatic correspondence and other documents relative to the topic being studied..."

13. To the best of his knowledge the Commission had

[1] *I.C.J. Reports 1951,* p. 131.

[2] See summary record of the 122nd meeting, para. 71.

never yet circulated a report of a special rapporteur to governments for comment, but it was a matter of common knowledge that all United Nations documents were distributed to Member Governments.

14. Mr. SPIROPOULOS endorsed the Secretary's remarks and stressed that papers prepared by special rapporteurs appointed by the Commission were merely an expression of their personal view. Only texts approved by the Commission could be sent to governments for comment.

15. Mr. CÓRDOVA said that he would like to have access to the documentary material submitted by the Secretariat to the special rapporteur and mentioned in the comment to article 4.

16. Mr. LIANG (Secretary to the Commission) said that in response to a request by Mr. François the Secretariat had made a collection of laws on the territorial sea, which it intended to publish in book form, perhaps during 1953.[3] But before that could be done the material woud have to be carefully checked and edited. As it was extremely voluminous it would be impossible to make copies available to all members of the Commission at the present stage, but the Secretariat would be ready to deal with any individual request for particular information.

17. The CHAIRMAN put to the vote Mr. Kozhevnikov's proposal.

Mr. Kozhevnikov's proposal was rejected by 10 votes to 2, with 2 abstentions.

18. Mr. KOZHEVNIKOV said that as his proposal had been rejected he wished to make some general observations on Mr. François' report, which repeated in the main the report prepared by him at the Conference for the Codification of International Law held at The Hague in 1930.

19. At first reading the draft articles prepared by the special rapporteur gave rise to a number of serious misgivings, the first being the use of the term "territorial sea" in place of the term "territorial waters" which occurred twice in General Assembly resolution 374 (IV), by which the Commission had been asked to give priority to the subject.

20. The second concerned the possibility of adopting a uniform maximum breadth for territorial waters. Mr. François had proposed that it be six nautical miles. He doubted whether that would be acceptable, since conditions varied widely and a number of States, including the Soviet Union, Bulgaria and certain Latin-America countries such as Colombia and Guatemala, had already adopted a limit of twelve nautical miles.

21. He also had weighty objections to article 2, which dealt in extremely vague terms with sovereignty over the territorial sea and failed to specify to what conditions prescribed by international law such sovereignty would be subject.

22. Article 6, relating to bays, laid down the rule that the belt of territorial sea should be measured from a straight line drawn across the opening of the bay, or, if the opening were more than ten miles wide, from a straight line drawn at the nearest point to the entrance at which the opening did not exceed ten miles. No such rule, however, was recognized by many States; indeed, its existence had been denied by the International Court of Justice in its judgment in the *Fisheries Case,* when it had declared: "In these circumstances the Court deems it necessary to point out that although the ten-mile rule has been adopted by certain States both in their national law and in their treaties and conventions, and although certain arbitral decisions have applied it as between these States, other States have adopted a different limit. Consequently, the ten-mile rule has not acquired the authority of a general rule of international law."[4]

23. Neither could he agree with the provision in article 22 that, as a general rule, a coastal State should not forbid the passage of foreign warships in its territorial sea and should not require a previous authorization or notification.

24. Article 13, which had no parallel in the draft prepared at The Hague Conference, dealt with the delimitation of the territorial sea of two adjacent States, but failed to take existing practice into account.

25. In the light of the foregoing considerations, he would submit the following proposal:

> "In view of the fact that the report on the régime of the territorial sea requires substantive modification, the Commission decides not to proceed at the present session with an article-by-article discussion of the draft regulation, but to confine itself to a general exchange of views, taking up the draft, article by article, at its next session."

26. The CHAIRMAN suggested that, like Mr. Kozhevnikov, other members might wish to make certain general remarks, having in mind the principal issues enumerated by the special rapporteur.

27. Mr. HUDSON said that it would be interesting to have the special rapporteur's views on the principal criticism levelled against the draft on the régime of the territorial sea worked out at The Hague Conference of 1930, a criticism which Mr. François had no doubt considered and which in his view might perhaps be dismissed. That criticism was that it was pointless to attempt to lay down a legal régime of world-wide application because conditions on various coasts differed so greatly. He had been struck by the force of that argument while studying the problem over the past six or seven years, during which time he had examined some 500 to 600 nautical charts.

28. Mr. ZOUREK said that the Commission should give a great deal of thought to its working methods, particularly when taking up a new subject so extensive

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[3] *Laws and Regulations on the Régime of the Territorial Sea,* United Nations Publication, Sales No.: 1957. V. 2.

[4] *Fisheries Case,* Judgment of 18 December 1951: *I.C.J. Reports 1951,* p. 131.

and important as the one under consideration. In the present case the question of method was clearly governed by the time factor. As only four meetings were to be devoted to item 5, the Commission could not hope to deal with all twenty-three articles of the special rapporteur's draft regulation. On the other hand, it would be too restrictive to focus attention merely on the four points mentioned by Mr. François. It was very doubtful whether the palliative offered by the special rapporteur, namely, that members should forward their comments to him in writing, would prove very effective.

29. In studying the report, he had become convinced that it would be most useful, even indispensable, to ascertain the views of governments on certain specific points before attempting to draft a convention. He accordingly proposed that the Commission confine itself to drawing up a very clear and precise questionnaire, which governments could answer without extensive preliminary research. That questionnaire might cover the following points:

(1) The breadth of territorial waters;

(2) The drawing of the base line;

(3) The drawing of the base line in bays;

(4) Definition of a bay;

(5) Régime of lighthouses erected in the high seas on rocks exposed only at low tide;

(6) Groups of islands, or islands situated along the coasts;

(7) Demarcation of the boundary between territorial waters in straits bounded by two or more coastal States, and where the combined breadth of the two belts of territorial waters exceeded the width of the strait;

(8) Delimitation of the territorial waters of two adjacent States;

(9) Right of passage;

(10) Arrest on board a foreign vessel in territorial waters; and

(11) Passage of warships.

30. Governments should also be asked whether they were in favour of the conclusion of an international convention even if agreement could not be reached on the breadth of territorial waters.

31. The preparation of the questionnaire would give all members of the Commission an opportunity of indicating their attitude on specific points, which would assist the special rapporteur in drafting his next report.

32. Mr. CÓRDOVA thought that, if the Commission wished to examine the régime of territorial waters thoroughly, it would have to take up every single article in Mr. François' draft. If Mr. Zourek's proposal were rejected he would support the special rapporteur's suggestion, on the understanding that members could request that articles other than those he had listed be considered.

33. Mr. FRANÇOIS observed that the report was only being given a first reading at the present session. All articles would be taken up at the fifth session.

34. Mr. YEPES said that he had abstained from voting on Mr. Kozhevnikov's proposal because he thought that, had it been discussed at greater length, some compromise solution might have been reached whereby the Commission would take up general issues relating to the régime of the territorial sea at the present session, and also send a questionnaire to governments.

35. Turning to the special rapporteur's report, he associated himself with Mr. François' view on the nature of the sovereignty exercised by States over the territorial sea.

36. He added that it was perfectly clear from a study of the report that the so-called three-mile limit for the breadth of territorial waters was a false dogma which modern international law had rejected. All the countries of America, from Canada to Chile and the Argentine, had adopted in one form or another a breadth of more than three miles, as had a large number of states of Europe, Asia and Africa. It could therefore be concluded that contemporary international law did not recognize a breadth of three miles as the limit of territorial waters. That was a false dogma which was quite unacceptable in the light of modern scientific knowledge.

37. The CHAIRMAN invited the Commission to take up article 2 in the special rapporteur's draft.

ARTICLE 2: JURIDICAL STATUS OF THE TERRITORIAL SEA [5]

38. Mr. HUDSON said that the phrase "subject to the conditions prescribed by international law" was too vague. The restrictions on the exercise of sovereignty over the territorial sea should be set forth in the draft convention or regulation. Personally, he only knew of one such restriction, namely, the right of innocent passage.

39. Using the phrase "coastal State", which had been adopted by the Commission during its discussions on the continental shelf, he suggested that article 2 be re-drafted to read:

> "Sovereignty over this belt is exercised by the coastal State subject to the conditions set forth in this convention."

40. Mr. FRANÇOIS pointed out that, when drafting the articles he had not known what their ultimate fate would be, and for that reason had avoided mentioning a convention.

41. The important issue raised by Mr. Hudson concerning the possibility of drafting uniform rules would have to be examined, but he did not think that diversity of conditions throughout the world should preclude the formulation of a universally applicable régime taking those divergencies into account.

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[5] Article 2 read as follows:

"Sovereignty over this belt is exercised subject to the conditions prescribed by international law."

PROCEDURE TO BE FOLLOWED

42. Referring to Mr. Zourek's proposal, he (Mr. François) said that the difference between the two procedures envisaged was not so great as might at first sight appear. In his opinion, the Commission should discuss the problem and then draw up draft rules for submission to governments for comment. Experience had proved that to be a more efficacious method of obtaining the views of governments than the circulation of questionnaires, which were apt to remain unanswered and were looked on by government departments as an incubus. His argument was reinforced by the unlikelihood of replies being provided by governments before the fifth session.

43. Mr. el-KHOURI agreed with the Secretary that the Commission could not circulate to governments for comment a report which it had not examined itself.

44. There was no reason why, after consideration of the four articles specified by Mr. François, the Commission should not take up others.

45. Mr. KOZHEVNIKOV said that Mr. Zourek's proposal, which was entirely consonant with the Commission's Statute, merited full consideration, and should take precedence over his own.

46. Mr. SANDSTRÖM pointed out that, as the Secretary had already mentioned, article 19, paragraph 2, of the Commission's Statute provided merely that the Commission should request governments to furnish "the texts of laws, decrees, judicial decisions, treaties, diplomatic correspondence and other documents relevant to the topic being studied and which the Commission deems necessary." It did not provide that it should ask governments for their views. Article 21, on the other hand, provided that the Commission should request governments to submit their comments on a draft, but only when the Commission considered it to be satisfactory.

47. The CHAIRMAN said that the proposal submitted by Mr. Zourek read as follows:

> "The Commission decides to draw up at its present session a questionnaire on the matters dealt with in the report on the régime of the territorial sea and to send it to governments through the Secretary-General."

48. Mr. CÓRDOVA did not altogether agree that Mr. Zourek's proposal ran counter to the Commission's statute. The articles quoted by Mr. Sandström related to the procedure which was to be followed in respect of codification. It was true that some parts of the Commission's work on the régime of the territorial sea could be regarded as codification, and in that connexion he would point out that, so far as he knew, the provisions of article 19, paragraph 2, had not yet been complied with. In other respects, however, with regard to the limits of the territorial sea, for example, the work was one of progressive development of international law, so that the provisions of article 16 of the Statute should also be complied with.

49. Although it was perhaps over-optimistic to hope that all governments, or even the great majority, would reply to the questionnaire, it would be better to have the comments of only a few governments than none at all. It should be borne in mind, moreover, that the question was of great interest to governments, and that they might therefore be more inclined to reply than in the case of other questionnaires.

50. Mr. SPIROPOULOS felt that the Statute was perfectly logical. The views of governments could be regarded as irrelevant to the scientific work of codification, although it should be borne in mind that even in the field of codification the Commission was required, under article 22, to take the comments of governments into account in preparing its final drafts for submission to the General Assembly. The question at present under discussion was purely one of codification, and although he had great sympathy with Mr. Zourek's proposal, he could not support it, since it ran counter to the Statute.

51. Mr. AMADO associated himself with Mr. Spiropoulos' remarks. He felt bound to point out, however, that the special rapporteur had indicated, in a number of passages in his report, that the agreement of governments to the provisions drafted by the Commission would have to be obtained. The only question, therefore, was whether that agreement should be obtained, as it were, in advance.

52. Mr. LAUTERPACHT felt that on balance the arguments were in favour of sending out a questionnaire to governments. He would therefore support Mr. Zourek's proposal, provided the special rapporteur did not consider that it would seriously hold up his work. He realized that it would be an inconvenience to governments to have to reply to a questionnaire, but he did not agree that they would be any less likely to do so than to submit comments on specific proposals. The Commission might consider some procedure for persuading them to reply within a reasonable period. The special rapporteur need not in any case wait for governments' replies to the questionnaire before continuing his work on the régime of the territorial sea. The only practical question therefore, in his view, was whether a questionnaire could be drafted in the time at the Commission's disposal which would elicit not only statements of fact but expressions of view, such as those which had made the replies to the questionnaire on statelessness so valuable.

53. Mr. FRANÇOIS said that he was firmly opposed to Mr. Zourek's proposal, both for the reasons advanced by Mr. Spiropoulos and because he considered that the procedure established in the Commission's Statute was a great advance on previous procedure. Governments often felt themselves committed by their replies to a questionnaire; no room was left for the changes of view and compromises required to reach subsequent agreement. If, on the other hand, the Commission submitted to governments rules which formed a whole and requested their comments on that whole, they might, for

the sake of the whole, accept individual provisions which they would have rejected had they been put to them separately at the outset.

54. He also opposed Mr. Zourek's proposal because he realized that it could not be expected that replies from governments would be recieved before April or May 1953 at the earliest, and he would therefore have no time to take them into account in preparing his report, which had to be submitted in advance of the next session. Moreover, if he was to base his proposals on the comments received from governments, it would obviously be necessary for him to wait until he had received the replies of all, or at least of the great majority; there was no assurance that the States most concerned would be the first to reply. In fact, adoption of Mr. Zourek's proposal would entail deferring until 1954 further consideration of the régime of the territorial sea, and therefore, as he had already pointed out, of the connected question of the continental shelf also.

55. Mr. KOZHEVNIKOV pointed out that the question under discussion had a bearing on all the Commission's work, and that it should be decided with reference to the Commission's basic functions. As a scientific body, the Commission must obtain the fullest possible data on the questions with which it had to deal. The value of Mr. Zourek's proposal as a means of ensuring that it had such data was evident, and he therefore supported it.

56. Mr. SCELLE agreed with Mr. François and Mr. Spiropoulos that experience had shown the advantages of the procedure laid down in the Commission's Statute over that which had spelt inactivity and frustration for the technical organs of the League of Nations.

57. Mr. LIANG (Secretary to the Commission) said that the question of the régime of the territorial sea was clearly one of codification. In his view, too, the procedure laid down in the Statute for such work was wise and logical. Very considerable material in the form of doctrine and legal texts was available, and the special rapporteur had now brought it up to date. Any views expressed by governments in reply to a questionnaire might well be *ad hoc* statements which would not carry the authority of the texts already at the Commission's disposal.

58. Mr. ZOUREK pointed out that the special rapporteur had himself indicated that the question could in many respects be regarded as one of progressive development. His (Mr. Zourek's) proposal did not aim at amending the Commission's normal procedure, but merely at adapting it to a particular subject of great importance. If the Commission asked governments for their views on certain specific aspects of the question which could be regarded as bearing on progressive development, he did not think it was over-optimistic to hope that replies would be received within six to eight months. Nor could he regard as valid the argument that a questionnaire was undesirable since governments would consider themselves committed by their replies to it; their views on the régime of the territorial sea were already fixed.

59. The CHAIRMAN put Mr. Zourek's proposal to the vote.

Mr. Zourek's proposal was rejected by 9 votes to 3, with 2 abstentions.

60. The CHAIRMAN drew attention to Mr. Kozhevnikov's second proposal[6] and asked its author whether its adoption would exclude subsequent discussion of the four articles which the special rapporteur thought of crucial importance, and of any other articles which the Commission subsequently decided to consider.

61. Mr. KOZHEVNIKOV said that any member of the Commission could of course refer to any article in the course of the general debate. The aim of his proposal was to prevent the Commission from considering the articles separately and voting on each of them.

Mr. Kozhevnikov's second proposal was rejected by 7 votes to 4 with 3 abstentions.

62. The CHAIRMAN said that the Commission would therefore follow the procedure suggested by the special rapporteur.

THE TERM "TERRITORIAL SEA"

63. Mr. KOZHEVNIKOV, referring to the Commission's decision to embark on a substantive discussion of the special rapporteur's proposals concerning the régime of the territorial sea, said that his comments on various points in the draft articles contained in the special rapporteur's report would be of a preliminary nature and that he reserved the right to revert to them later since the draft articles would need substantial final shaping before the next reading. Meanwhile, he again asked the special rapporteur why he had substituted the term "territorial sea" for the usual term "territorial waters", which had been used in General Assembly resolution 374 (IV).

64. Mr. FRANÇOIS had not understood that the General Assembly, which was not made up of legal experts, had intended to consecrate that term for all time. The reason why he had preferred the term "territorial sea" was, as pointed out in his comment to article 1, that use of the term "territorial waters" led to confusion owing to the fact that it was also applied to inland waters.

65. Mr. LAUTERPACHT said that the term "territorial sea" was still not current in English usage, and that he doubted whether there was any tendency for its use to increase. He appreciated the desirability of distinguishing between national waters and what the special rapporteur called the "territorial sea", but must point out in that connexion that the recent judgment of the International Court of Justice in the *Fisheries*

[6] See para. 25 above.

Case obscured that distinction. On page 125 of the text of the judgment, for example, it was stated that there could be no doubt that the zone delimited by the Norwegian Royal Decree of 12 July 1935 (i.e., including national or inland waters), was none other than the sea area which Norway considered to be her territorial sea. Yet the primary purpose of that decree was to deal with what were claimed to be the national, the internal, waters of Norway. Neither had the distinction been observed in the separate or dissenting opinions. He did not, however, consider that the Commission was bound to follow the Court inasmuch as it failed to distinguish between national waters and the "territorial sea". On the contrary, he agreed with the special rapporteur that the distinction was vital, but suggested that he might consider expanding article 1 to make the meaning absolutely clear.

66. He recalled that it had been suggested by Mr. Hudson[7] that the conditions subject to which sovereignty over the territorial sea was exercised should be set forth explicitly in the convention. It might be, however, that, by oversight or otherwise, the Commission would not list in the convention all such conditions. He wondered, therefore, whether it might not be preferable to say, as the special rapporteur had said, "subject to the conditions prescribed by international law."

The meeting rose at 1.5 p.m.

[7] See paras. 38 and 39 above.

165th MEETING

Wednesday, 16 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 CÓRDOVA, 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. Georges SCELLE, 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).

Régime of the territorial sea (item 5 of the agenda) (A/CN.4/53) (*continued*)

1. The CHAIRMAN invited the Commission to continue its discussion of the special rapporteur's report on the régime of the territorial sea (A/CN.4/58), with special reference to articles 2, 4, 5 and 13, and recalled that Mr. Kozhevnikov had raised a preliminary question concerning terminology.[1]

THE TERM "TERRITORIAL SEA" (*continued*)

2. Mr. HUDSON said that, contrary to what Mr. Lauterpacht had maintained, the International Court of Justice, in its judgment in the *Fisheries Case* between the United Kingdom and Norway, 1951, had not used the term "territorial sea" in any sense other than that in which the special rapporteur understood it. The sole object of the passage in the judgment quoted by Mr. Lauterpacht was to make clear that the lines drawn in the Norwegian Royal Decree of 12 July 1935, had been intended by the Norwegian Government to delimit Norway's territorial sea for all purposes, and not for purposes of fishing alone, and that the Court and the other party to the dispute had accepted the fact that that had been the Norwegian Government's intention. There had been no question, however, but that the territorial sea was the four-mile belt *outside* those lines.

3. There was something to be said in favour of the use of either term, "territorial sea" or "territorial waters". There would be no room for doubt, however, as to what was meant if article 1 were amended to read:

> "The territory of a *coastal* State included a belt of *marginal* sea described as the territorial sea."

4. Mr. ZOUREK felt that the Commission should at least attempt to contribute towards the standardization of terminology, which at present differed so greatly in the matter under discussion. Despite the many years that had elapsed since the Conference for the Codification of International Law held at The Hague in 1930, the term "territorial sea", used in the Regulations drawn up at that Conference, had not gained currency either in English or in French. Governments had continued to use the ordinary term "territorial waters" in international agreements, and both the General Assembly and the International Law Commission itself, in its report on its third session, had preferred it to the term "territorial sea". It was true that the latter term had been used by the International Court of Justice in its judgment in the *Fisheries Case*, but it was noteworthy that it had not used it consistently.

5. The arguments advanced against the term "territorial waters" were, at first sight, convincing, but the Commission should weigh against them the consideration that the terms used in languages other than English or French corresponded for the most part to the term "territorial waters", and that confusion would accordingly arise if the latter term were changed to

[1] See summary record of the 164th meeting, paras. 19 and 63.