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Summary record of the 165th meeting

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

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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. Hudson⁷ 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.

CONTENTS

	Page
Régime of the territorial sea (item 5 of the agenda) (A/CN.4/53) (continued)	148
The term "territorial sea" (continued)	148
Article 2: Juridical status of the territorial sea (resumed from the 164th meeting)	150
Article 3: Juridical status of the bed and subsoil	152
Article 4: Breadth	153

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. 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.

“territorial sea”. The danger of confusion resulting from the use of the term “territorial waters” could easily be averted by giving a clear definition of that term in article 1.

6. For all those reasons, he proposed that the term “territorial waters” be substituted *passim* for “territorial sea” in the draft regulation contained in the special rapporteur’s report.

7. Mr. SPIROPOULOS felt that the discussion lacked scientific or practical value. The fact that the General Assembly had used the term “territorial waters” was quite without significance; it had been used merely because it had been the term used in the original draft resolution submitted in the Sixth Committee; had another term been used in that draft resolution, it would have been reproduced equally in the resolution of the General Assembly itself. The term “territorial sea” was open to no misunderstanding, and he could not understand the objections to its use.

8. Mr. SCALLE expressed agreement with the view expressed by Mr. Spiropoulos.

9. Mr. YEPES felt that it was of some importance that the Commission should attempt to promote the standardization of legal terminology. He was personally in favour of the term “territorial waters”, which was in more common usage, having been employed, for example, in the Treaty of Peace with Japan, and which could, moreover, be translated into other languages word for word, whereas the alternative term could not.

10. Mr. el-KHOURI agreed with Mr. Yepes.

11. Mr. SANDSTRÖM and Mr. SPIROPOULOS pointed out that the Commission was only concerned with drafting the text in English and French. The terms used could be translated into other languages by their semantic equivalents even if they were not exact word-for-word translations.

12. Mr. KOZHEVNIKOV thought that the question of terminology which he had raised was important, and had substantive implications. The Commission should therefore consider it carefully.

13. He wondered if, in view of the arguments that had been advanced, the special rapporteur still held the view that use of the term “territorial sea” would give rise to less confusion than would the use of the customary term, “territorial waters”.

14. Mr. FRANÇOIS said that, as he had already indicated, he preferred to use the term “territorial sea” for two reasons: in the first place, the term “territorial waters” was likely to lead to confusion owing to the fact that it was also applied to inland waters; secondly, an international conference had already adopted the former term, and he thought that the Commission should have more cogent reasons than had so far been advanced for reverting to the term “territorial waters”.

15. Mr. LAUTERPACHT thought that the question was not of extreme importance, but he felt it was an exaggeration to say that it was of no scientific or practical value. The special rapporteur should receive guidance from the Commission as to which term he should use throughout the draft regulation. Moreover, there appeared to be some element of doubt concerning the exact meaning of the two terms.

16. Mr. LIANG (Secretary to the Commission) suggested to Mr. Spiropoulos that if the term used in the original draft resolution submitted in the Sixth Committee had not been current, it would have been changed before the resolution was adopted by the General Assembly itself. It was not therefore altogether correct to suggest that no significance attached to the term used in that resolution.

17. As the special rapporteur had pointed out, the term “territorial sea” presented the one scientific advantage that it clearly excluded inland waters. On the other hand, inland waters had so far been the subject of little controversy in international law, and it was therefore possible that no student of the subject would be likely to be confused by the term “territorial waters”.

18. Mr. AMADO said that, although he personally would prefer the term “territorial waters”, he would support the term “territorial sea”, for the reasons given by the special rapporteur.

19. Mr. SPIROPOULOS recalled that he had merely said that the discussion lacked practical or scientific importance. The subject itself was obviously of some importance, but the special rapporteur had chosen one term in favour of another for reasons which had not yet been refuted by any arguments of equal weight in favour of the other term. On the other hand, he saw no reason why the Commission should not use the term “*mer territoriale*” in French and “territorial waters” in English, if that would resolve the difficulty with which it was faced.

20. Mr. LAUTERPACHT said that if the special rapporteur made one slight alteration to the wording he had proposed for article 1, he could satisfy those members of the Commission who preferred the term “territorial waters” while still ensuring that its use would cause no confusion. That article at present read: “The territory of a State includes a belt of sea described as the territorial sea”. If he replaced the last word by the word “waters” the reference to “a belt of sea” would still make it clear that inland waters were excluded.

21. Mr. FRANÇOIS said that if Mr. Zourek’s proposal were adopted, he would certainly bear in mind the point made by Mr. Lauterpacht. Not that it was entirely convincing, however, since not everyone who referred to the draft regulation would turn first to article 1. Moreover, he still saw no good reason for using the term “territorial waters” in preference to “territorial sea”.

22. The CHAIRMAN put to the vote the alternative terms "territorial waters" and "territorial sea".

The term "territorial sea" was adopted by 9 votes to 5.

ARTICLE 2: JURIDICAL STATUS OF THE TERRITORIAL SEA (resumed from the 164th meeting)

23. The CHAIRMAN invited comments on the principle contained in article 2, which read:

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

In that connexion he recalled the suggestion made by Mr. Hudson at the previous meeting and the special rapporteur's reply thereto.²

24. Mr. KOZHEVNIKOV said that the wording suggested by the special rapporteur was vague. It failed to say what was meant by sovereignty, by whom it was to be exercised, and what were the conditions prescribed by international law to which it was to be subject.

25. Mr. FRANÇOIS drew attention to the observations on article 1, paragraph 2, of the Regulations approved by the Second Committee of the 1930 Codification Conference contained in the Committee's report. Part of those observations read:

"Obviously sovereignty over the territorial sea, like sovereignty over the domain on land, can only be exercised subject to the conditions laid down by international law. As the limitations which international law imposes on the power of the State in respect of the latter's sovereignty over the territorial sea are greater than those it imposes in respect of the domain on land, it has not been thought superfluous to make special mention of these limitations in the text of the article itself."³

He had been guided by that view, but did not feel strongly about the necessity for that article, as the principle was already laid down in article 1. He had thought it unnecessary to specify that sovereignty should be exercised by the coastal State.

26. Mr. AMADO said that, in view of the wording of article 1, which read, in its present form, "The territory of a State includes a belt of sea described as the territorial sea", he saw no need for article 2 at all. It was unnecessary to provide that a State exercised sovereignty over its own territory, and the only important extra condition to which sovereignty over the territorial sea was subject, as compared to sovereignty over the domain on land, was, as everyone knew and recognized, in respect of the right of innocent passage. He suggested therefore that article 2 be deleted.

27. Mr. LIANG (Secretary to the Commission) pointed out that the substance of articles 1 and 2 of Mr. François' draft had been combined in a single article in the

1930 regulation. Mr. François had given no reasons for splitting it into two articles, and in his (Mr. Liang's) view the combination was preferable.

28. Mr. YEPES felt that article 2 should be retained so as to make clear that sovereignty over the territorial sea was not absolute, but was subject to certain conditions. He suggested, however, that the words "prescribed by international law" should be replaced by "recognized in international law".

29. Mr. CORDOVA agreed with Mr. Amado that there was no need to emphasize the conditions to which the exercise of sovereignty over the territorial sea was subject; neither was it necessary to do so with regard to sovereignty over territorial land. He suggested, therefore, that the words "subject to the conditions prescribed by international law" be deleted, and the article completed merely by the words "by the coastal State".

30. Mr. FRANÇOIS pointed out that, if the words "subject to the conditions prescribed by international law" were deleted, the entire article could be deleted since, as Mr. Amado had pointed out, it was unnecessary to stipulate that a State could exercise sovereignty over its own territory.

31. Mr. el-KHOURI agreed with the special rapporteur that if the last clause was deleted article 2 would lose its *raison-d'être*. He supported the article as it stood. If it was deleted, it might be assumed that sovereignty over the territorial sea was subject only to the conditions prescribed by international law in respect of sovereignty over the domain on land. The right of innocent passage was not, however, the only additional condition to which sovereignty over the territorial sea was subject.

32. Mr. SANDSTRÖM felt that the limitations imposed by international law on the exercise of sovereignty over the territorial sea were so important that attention should be drawn to them in the very first article of the draft regulation. He would therefore suggest that the special rapporteur bear in mind the suggestion made by the Secretary.

33. Mr. SCELLE said that he would merely point out that all the Commission's difficulties in the present respect would disappear if the word "sovereignty" were replaced by the word "powers" (*compétence*).

34. Mr. LAUTERPACHT said that the sovereignty of the coastal State over the territorial sea had been so well established that he did not think the Commission could accept Mr. Scelle's view. Mr. el-Khoury had given a complete answer to Mr. Amado's suggestion. It was vital that specific reference should be made to the limitations imposed by international law on sovereignty over the territorial sea, particularly in view of the recent tendency to increase the breadth of that sea.

35. Mr. KOZHEVNIKOV agreed that the principle of the coastal State's sovereignty over its territorial sea was so well established that Mr. Scelle's suggestion could not be considered further.

² See summary record of the 164th meeting, paras. 38 to 42.

³ Quoted in document A/CN.4/53 (mimeographed English text, p. 7; printed French text, comment to article 2, para. 1).

36. Mr. ZOUREK agreed with Mr. Amado that there was no reason why special mention should be made of the limitations to sovereignty over one particular part of the national territory, and that if the last phrase of article 2 was accordingly deleted, the entire article could be deleted.
37. Mr. HSU said that the sovereignty of the coastal State over its territorial sea should be recognized. With regard to Mr. Amado's suggestion, he sympathized with it but felt it preferable to refer to the limitations in question rather than to leave the matter vague.
38. The CHAIRMAN put to the vote Mr. Amado's suggestion that article 2 be deleted in its entirety.
Mr. Amado's suggestion was rejected by 7 votes to 2, with 5 abstentions.
39. The CHAIRMAN then put to the vote Mr. Córdova's suggestion that article 2 be amended to read: "Sovereignty over this belt is exercised by the coastal State".
Mr. Córdova's suggestion was rejected by 7 votes to 5, with 2 abstentions.
40. The CHAIRMAN said that it therefore appeared that the majority of the Commission agreed that the principle stated in article 2 in the special rapporteur's draft regulation should be retained without change.
41. Mr. KOZHEVNIKOV felt that such a statement was open to question so long as the principle itself had not been put to the vote.
42. Mr. HUDSON said that he had voted in favour of Mr. Córdova's suggestion to delete the words "subject to the conditions prescribed by international law", because he felt that adoption of those words would be tantamount to saying that there were some conditions prescribed by international law which, for some reason or another, the Commission was unable to ascertain and make provision for in its draft on the régime of the territorial sea. If those words were replaced by the words "subject to the conditions prescribed in the present regulation", he would support the article as a whole. In his view there would be no great difficulty about providing the conditions; he knew of none other than those indicated in the special rapporteur's report.
43. Mr. SPIROPOULOS said that the special rapporteur had to a great extent modelled the text of article 2 on that of article 1, second paragraph, of the draft prepared by The Hague Conference for the Codification of International Law. Moreover, he had referred to "the conditions prescribed by international law" for the same reason as had prompted the inclusion of the words "and the other rules of international law" in the latter text. That reason was the impossibility of making a convention exhaustive. If that could be achieved, as Mr. Hudson had argued, there would be no need for such a proviso, but he wondered whether the Commission could be certain of being more successful in that respect than The Hague Conference.
44. Mr. CORDOVA was greatly disturbed by Mr. Spiropoulos' argument, since, if accepted, it would mean that the door would be left open to an unlimited number of unspecified restrictions on sovereignty over the territorial sea. He believed that those restrictions should be limited and defined, and accordingly moved the substitution of the words "in this regulation" for the words "by international law", as proposed by Mr. Hudson.
45. Mr. AMADO said that, to the best of his knowledge, there was no major derogation from the principle of sovereignty over the territorial sea other than the right of innocent passage.
46. Mr. FRANÇOIS said that he would oppose Mr. Córdova's amendment, because it was an entirely unnecessary statement of the obvious.
47. Mr. CORDOVA observed that that argument applied with equal force to the words "subject to the conditions prescribed by international law".
48. Mr. LAUTERPACHT agreed with the views expressed by Mr. François and Mr. Spiropoulos since, although the Commission was an authoritative and meticulous body, some restrictions on sovereignty over the territorial sea might escape it.
49. Mr. YEPES proposed that the words "and by international law" be added at the end of Mr. Córdova's amendment, so as to make article 2 read as follows:
"Sovereignty over this belt is exercised by the coastal State subject to the conditions prescribed in this regulation and by international law."
50. Mr. AMADO observed that international law was a body of known rules. The view that it included rules that were at present unknown was totally unacceptable to him.
51. Mr. ZOUREK considered that, if the Commission was to succeed in its efforts to codify international law, it must take all the relevant rules into account or its work would be totally useless. It was unthinkable that the way should be left open for unforeseeable contingencies.
52. The CHAIRMAN put Mr. Yepes' proposal to the vote.
Mr. Yepes' proposal was adopted by 7 votes to 6, with 1 abstention.
53. Mr. AMADO observed that the adoption of that proposal would make it difficult for certain States to accept such a provision.
54. The CHAIRMAN declared that he understood the Commission to have adopted article 2, as amended by Mr. Yepes' proposal.
55. Mr. KOZHEVNIKOV observed that article 2 had not been put to the vote as a whole; had that been done, he would have abstained.
56. The CHAIRMAN proposed that the Commission

pass to article 4, in accordance with the decision taken at the preceding meeting.⁴

ARTICLE 3 : JURIDICAL STATUS OF THE BED AND SUBSOIL⁵

57. Mr. KOZHEVNIKOV pointed out that article 3 raised an important question of principle, namely, that of air space. Paragraph 1 would be acceptable provided the words "and air space" were added. As he understood it, the Commission's decision to confine discussions to certain articles in the special rapporteur's draft did not preclude members from commenting on other articles which appeared to raise important matters of principle.

58. Paragraph 2 of article 3 seemed to him obscure, and he considered that it should be deleted.

59. Mr. FRANÇOIS observed that, in accordance with the Commission's decision, article 4 should be taken up first.

60. Mr. CORDOVA said that, since the status of the bed of the territorial sea and the subsoil was closely linked with the question of sovereignty over the territorial sea, it should be considered forthwith.

61. Mr. LAUTERPACHT expressed the hope that the Chairman would interpret the Commission's decision on its method of work literally, since it was undesirable that members should be prevented from raising important matters of principle in addition to those which would come up in connexion with the examination of the articles which the Commission had agreed to deal with.

62. Mr. el-KHOURI considered the Commission's decision at the preceding meeting to have been a reasonable one. Article 4, dealing with the limits of the territorial sea, must be taken up before article 3.

63. Mr. AMADO said that, although he was in favour of the Commission adhering to any plan of work it had adopted since members were guided by such decisions in planning their private studies between meetings he supported Mr. Kozhevnikov in his view that article 3 should be taken up at once because of its relevance to the whole problem of sovereignty over the territorial sea.

64. Mr. FRANÇOIS appealed to the Commission, if it decided to take up article 3, to conclude its discussion at the present meeting in order to leave time for the consideration of major issues.

65. The reason why he had omitted to mention air space in article 3 was that, in discussing the régime of

the continental shelf, the Commission had decided not to deal for the time being with the status of the air.

66. Mr. CORDOVA considered that there was no justification for extending the Commission's decision in connexion with the régime of the continental shelf to the status of the air space above the territorial sea. The same considerations for recognizing the sovereignty of States over the territorial sea applied equally to the air space above it. If no mention was made of the air space, that would imply that the Commission was in favour of a different régime for it.

67. Mr. FRANÇOIS said that the status of the air above the territorial sea could not be considered apart from the status of the air in general, otherwise the Commission would be in danger of contemplating a special régime for the former.

68. Mr. KOZHEVNIKOV said that the foregoing discussion had confirmed his arguments. He therefore moved that article 3 be taken up.

69. Mr. SCALLE said that the Commission was in danger of confusing three elements. Undoubtedly it could plunge into a general discussion on sovereignty, which would be of absorbing interest but purely academic. If anything practical was to be achieved, the Commission must confine itself to examining the problem of the territorial sea alone.

70. Mr. ZOUREK said that, since article 3 dealt with the territory of a coastal State, it was inadmissible to omit mention of the air space above it, as had been done in article 2 of the draft prepared at The Hague Conference for the Codification of International Law in 1930.

71. The only argument which had been advanced against the Commission's considering article 3 was that to do so would conflict with a previous decision. But if the special rapporteur was to prepare a draft for the next session, he must be given appropriate directives.

72. The CHAIRMAN asked whether Mr. Kozhevnikov, in making his proposal, had intended that article 3 be dealt with before any other.

73. Mr. KOZHEVNIKOV said that he had not had that in mind, though it would certainly be more logical to discuss article 3 before considering the limits of the territorial sea. However, his main concern was that article 3 should be discussed at some time or another.

74. Mr. CORDOVA said that he himself would propose that article 3 be taken up immediately.

Mr. Córdova's proposal was rejected by 6 votes to 5, with 3 abstentions.

75. The CHAIRMAN put to the vote Mr. Kozhevnikov's proposal that article 3 be taken up at the present session as one of the main questions of discussion. He himself suggested that it be taken up after articles 4, 5 and 13 had been disposed of.

⁴ See summary record of the 164th meeting, paras. 4—8 and 62.

⁵ Article 3 read as follows :

"1. The territory of a coastal State also includes the bed of the territorial sea and the subsoil.

"2. Nothing in the present Regulation prejudices any conventions or other rules of international law relating to the exercise of sovereignty in these domains."

Mr. Kozhevnikov's proposal, subject to the Chairman's suggestion, was adopted by 12 votes to none, with 1 abstention.

ARTICLE 4: BREADTH⁶

76. Mr. FRANÇOIS said that in dealing with article 4 the Commission must decide whether existing international law recognized a limit to the territorial sea over which States exercised sovereignty, and if so, what limit. If the Commission decided in the negative, it must consider whether it was possible to reach agreement on a limit.

77. Mr. HSU, referring to the words in parentheses, namely, "Nationalist Government", after the word "China" in the commentary on article 4, expressed surprise that such a parenthetical explanation should be called for, since the names of other States in the same section of the Report did not bear similar qualification as to governments. He did not think it appropriate that the Commission should be concerned with political questions. In view of the special rapporteur's use of those words, he felt bound to point out that only one government of China had been recognized by the United Nations. He believed, however, that the addition of the parenthetical note was a mere oversight on the part of the special rapporteur.⁷

78. Article 4 was the key article in the draft, and if agreement could be reached on it the remainder of the Commission's task would be relatively easy. If not, discussion of the other articles would be more or less academic.

79. If it were possible to fix a generally acceptable limit to the territorial sea, the existing anarchy would be ended and the freedom of the seas would be reinforced, since further encroachments by States would cease.

80. He could agree with the wording of article 4, apart from the limit of six nautical miles proposed by the special rapporteur. He believed a far more sound and practical one would be twelve nautical miles, which would meet the requirements of most States. Many States which had adopted the three-mile limit had extended the limit for one purpose or another, such as customs, fishing and so on. On the other hand, very few States amongst those listed by the special rapporteur had adopted a limit in excess of twelve nautical miles, and it should be possible to convince them of the need for moderation. It would clearly be impracticable to suggest a limit of less than twelve nautical miles. The twelve-mile limit was not too high a price to pay for universal acceptance, and those States which wished to observe a narrower limit would be free to do so.

The meeting rose at 1.10 p.m.

⁶ Article 4 read as follows:

"The breadth of the belt of sea defined in article 1 shall be fixed by the coastal State but may not exceed six marine miles."

⁷ The incriminated words were deleted from the printed edition of the report.

166th MEETING

Thursday, 17 July 1952, at 9.45 a.m.

CONTENTS

	<i>Page</i>
Régime of the territorial sea (item 5 of the agenda) (A/CN.4/53) (<i>continued</i>)	153
Article 4: Breadth (<i>continued</i>)	153

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 consideration of the Draft Regulation contained in the special rapporteur's report (A/CN.4/53) on the régime of the territorial sea.

ARTICLE 4: BREATH (*continued*)

2. Mr. KOZHEVNIKOV said that he had already stated the reasons for his opposition to article 4, as drafted by the special rapporteur and had drawn particular attention to the fact that the breadth of territorial waters might differ from country to country, according to conditions.¹ Some countries had adopted the twelve-mile limit, and it would be remembered that, in its reply to the questionnaire sent out by the Conference for the Codification of International Law of 1930, China had declared in favour of a limit of fifteen nautical miles.

3. So far as he knew, the Government of the People's Republic of China had so far made no ruling on the width of its territorial waters, and it would be extremely interesting to hear the views of a representative of that Government chosen by the will of the people in the exercise of their sovereign rights. Unfortunately there was no representative of the legitimate government of China in the Commission but he had no doubt that such an abnormal situation would in due course be put right. He had only touched on the matter in very general terms, out of respect for the fundamental principle of

¹ See summary record of the 164th meeting, para. 20.