Document:-
A/CN.4/SR.169

Summary record of the 169th meeting

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

Extract from the Yearbook of the International Law Commission:-
1952 , **vol. I**

Downloaded from the web site of the International Law Commission
(http://www.un.org/law/ilc/index.htm)

Copyright © United Nations

to suggesting that it was impossible to speak of international practice as authorizing the extension of the territorial sea. Surely only the law could authorize.

62. He had already answered the question asked by both Mr. Yepes and Mr. Zourek as to what principle prohibited the extension of the territorial sea. The principle was of course the freedom of the seas. He must contest Mr. Zourek's argument that States were the sole judge in the matter. The three-mile limit had been observed for centuries and accepted as a rule of law.

63. Mr. CÓRDOVA asked whether the special rapporteur considered that the principle of the freedom of the seas authorized the delimitation of the territorial sea at six or twelve miles.

64. Mr. FRANÇOIS replied in the affirmative. In the past a three-mile limit had been recognized. Admittedly the consensus of opinion at the present time might be that the limit was now six or twelve miles.

65. Mr. SCELLE observed that, despite Mr. François' argument, States had not refrained, during the period in which the three-mile limit was alleged to have been accepted as a rule of law, from exercising their sovereignty beyond that limit.

66. Mr. FRANÇOIS pointed out that any State which had attempted to extend its territorial sea beyond three miles had met with firm opposition on the part of the international community.

67. Mr. SPIROPOULOS appealed to the special rapporteur to withdraw point 3 from his proposal, since it was not a matter on which the Commission ought to take a decision until it had examined the whole of the report.

68. Mr. FRANÇOIS expressed his willingness provisionally to withdraw point 3 of his proposal.

The meeting rose at 6.10 p.m.

169th MEETING

Tuesday, 22 July 1952, at 9.45 a.m.

CONTENTS

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. 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) (*continued*)

1. The CHAIRMAN invited the Commission to continue its consideration of the draft Regulation contained in the special rapporteur's report on the régime of the territorial sea (A/CN.4/53).

ARTICLE 4: BREADTH (*continued*)

2. The CHAIRMAN, speaking as a member of the Commission, said that he wished to explain his reasons for opposing Mr. François' proposal.[1]

3. Point 1 was tantamount to a declaration that there was no rule of international law limiting the territorial sea to three miles. He failed to see any justification for such a sweeping statement. There did not appear to him to be sufficient evidence to support such an assertion. Since the day when a Netherlands jurist established the breadth of the territorial sea at the range of the cannon, which an Italian engineer calculated at three miles, there had been a rule which was respected and applied by most States.

4. Reference had been made to a statement by Gidel that " the idol " of the three-mile rule had fallen at The Hague Conference in 1930;[2] but it must be pointed out that, of the thirty-two governments represented at that Conference, seventeen had voted in favour of the three-mile limit and four in favour of a four-mile limit, while eleven were for a six-mile limit, including the Portuguese representative who was the only one to mention the possibility of a twelve-mile limit.

5. Reference had also been made to apparently contradictory statements by the same author. In his view, Gidel's last word in the matter was that quoted by the special rapporteur in his report:

> "There is no rule of international law concerning the extent of the jurisdiction of the coastal State over its adjacent waters other than the minimum rule whereby every coastal State exercises all the rights inherent in sovereignty over the waters adjacent to its territory to a distance of three miles, and partial jurisdiction beyond that distance in the case of certain specific interests."

In his (Mr. Alfaro's) view, that statement corresponded to the facts. There was a positive rule of international law which recognized a minimum of three miles as the breadth of the territorial sea, and it was the Commission's duty to state it; but it should also state clearly that any claim that a wider belt was the rule today could only be based on unilateral action taken by a certain number of States. The Commission might also

[1] See summary record of the 168th meeting, para. 5.

[2] *Ibid.*, 167th meeting, para. 12.

state that governments and individual writers held different views on whether the three-mile limit should be extended, and, if so, how far.

6. Mr. Amado's amendments [3] appeared therefore to reflect the actual situation more accurately than Mr. François' proposal, and he would be prepared to support it provided the words "twelve miles" in paragraph 2 were replaced by the words "three miles".

7. Mr. HUDSON recalled that, at the 1930 Hague Conference for the Codification of International Law, the Second Committee had taken no decision as to whether existing international law recognized any fixed breadth of the territorial sea. The various representatives present had merely voiced their opinions and, in that connexion, Mr. Gidel, of the French delegation, had remarked:

> "It is to be understood that this is to be a provisional expression of opinion. It is not a categorical or final declaration of our attitude. Each delegation will announce its position in principle." [4]

The Chairman had replied:

> "I quite agree with what Mr. Gidel says, and the views expressed must be interpreted accordingly." [5]

Moreover, the views which had been expressed had been hedged about with various qualifications relating to contiguous zones, etc.

8. The CHAIRMAN pointed out that he had merely been endeavouring to show that there was no evidence to support the existence of a rule of international law that the breadth of the territorial sea should be more than three miles.

9. Mr. AMADO pointed out that his amendments referred to "international practice". It could not be denied that delimitation of the territorial sea at between three and twelve miles was accepted as a matter of international practice.

10. Mr. LAUTERPACHT asked what evidence Mr. Amado could produce that States had accepted extension of the territorial sea up to twelve miles any more than they had accepted its extension to fifty or two hundred miles.

11. Mr. AMADO agreed that he knew of no cases which threw any light on that question. Extension of the territorial sea up to twelve miles was, however, a recognized practice, and he thought the special rapporteur would confirm that.

12. Mr. SCELLE asked whether Mr. Amado meant that no rule of law existed in the matter, but only a rule of procedure.

13. Mr. AMADO replied that that was precisely his meaning.

14. Mr. KOZHEVNIKOV said that he had listened to Mr. Alfaro's statement with great interest, but he was more convinced than ever that not only was the three-mile rule not part of existing international law, but that it never had been. At the 1930 Conference a number of representatives had spoken in favour of a three-mile limit, but a very large proportion of governments, even of those States represented at the Conference, had maintained that there was no basis for such a limit. Whatever Mr. Gidel had said, it could not be supposed that the views then expressed had been other than carefully considered. In fact, then, there had been no three-mile rule in 1930, and it could hardly be claimed that it had come into being since. International law and practice admitted of no limitation to the breadth of the belt of sea which a State could claim as its territorial sea, and the Commission could not attempt to impose a non-existent standard or rule.

15. In any event it seemed that the Commission would be unable to reach a decision without further consideration of existing legislation and practice. If it attempted to make a formal recommendation at its present session, it would only be creating difficulties for itself and misleading public opinion. He therefore proposed, if the general discussion was now concluded, that the Commission defer a decision on the question of the breadth of the territorial sea.

16. Mr. SPIROPOULOS said that he was in agreement with Mr. Kozhevnikov as regards his proposal. As a wide divergence of view prevailed in the Commission, any vote on the precise breadth of the territorial sea could only yield a decision by a narrow majority.

17. He proposed therefore that, in the special rapporteur's draft of article 4, the words "but may not exceed six marine miles" be replaced by the words "but the freedom of that State to legislate on the matter is limited by the principle of freedom of the seas,", and that the attached comment, after sketching the historical background, proceed along the lines of paragraphs 1 and 3 of Mr. Amado's amendments. In that way it would be possible, he hoped, to secure unanimous agreement, and to comply with the provisions of article 20 of the Commission's Statute.

18. Mr. LIANG (Secretary to the Commission) said that he was in full agreement with Mr. Spiropoulos that no unanimous or even preponderant decision could be reached in favour of any of the points of view expressed, except for some very general one such as Mr. Spiropoulos himself had put into words. He felt, however, that further consideration should be given to Mr. Kozhevnikov's proposal. He thought it was clearly the intention of the Statute that on any particular subject the Commission's work should be submitted as an integrated whole, and not piecemeal. It should ensure that it was judged by the final fruits of its work. There was, of course, nothing to prevent the Commission from submitting progress reports on a subject it was

---

[3] *Ibid.*, 168th meeting, para. 45.

[4] Extracts from the Provisional Minutes of the Thirteenth Meeting of the Second Committee, Conference for the Codification of International Law (The Hague, March—April 1930), Report of the Second Commission (Territorial Sea), League of Nations Publication, *V. Legal 1930, V. 9,* (document C.230. M.117. 1930. V), p. 15.

[5] *Ibid.*

considering, but the General Assembly might be misled, and public opinion perturbed, by only a few brief sentences on so complex a question; moreover, members of the General Assembly might not have time during the General Assembly session to refer to the Commission's summary records so as to understand the background to those necessarily somewhat laconic sentences.

19. Mr. CÓRDOVA feared that the wording proposed by Mr. Spiropoulos would not prove very helpful and might even cause confusion. He saw no reason why the Commission should not take a definite stand on certain questions. A preponderant majority of the Commission held the view that the three-mile rule no longer existed in international law. A vote on that question would at least give some guidance to the special rapporteur.

20. Mr. LAUTERPACHT said that he did not feel as sure as Mr. Córdova that an overwhelming majority of the Commission favoured the abolition of the three-mile rule. In any event, it must be realised that such a decision would, in the first place, give the Commission a kind of publicity which was wholly undesirable. Based as it would be on only three days' debate, which were themselves based on five pages of statistics and six of other information, he feared that it would be most damaging to the Commission's prestige. Secondly, it would prejudge the issues before any political conference that might be convened to seek a political solution to the matter; it would make difficult the co-operation of many States faced by a rash decision of the Commission on an issue of great significance. Thirdly, by preventing him from devoting further constructive thinking to the problem as a whole, and particularly to the possibility of alternatives to an extension of the territorial sea, it would hinder rather than help the special rapporteur. Lastly, it might open the floodgates to further exorbitant claims on the subject.

21. He would therefore vote for Mr. Spiropoulos' proposal, and if that was not generally acceptable, for that of Mr. Kozhevnikov.

22. Mr. SCELLE said that he could accept either Mr. Amado's or Mr. Spiropoulos' proposal, since both merely stated a fact, but he preferred Mr. Kozhevnikov's proposal, which in the circumstances was perhaps the most prudent.

23. Mr. ZOUREK felt that a majority of the Commission were already in agreement that the three-mile limit had never existed as a general rule of international law and that if all the information on the subject were submitted to the Commission at its next session, even those members who at present argued that the three-mile rule had existed and still did exist would be compelled to admit that in fact it had never existed as a general rule.

24. Mr. SPIROPOULOS suggested that Mr. Kozhevnikov's proposal be amended in the sense that, while deferring a decision, the Commission should also request the special rapporteur to consider the various points of view that had been expressed and the various proposals that had been made and then submit specific proposals to it at its next session.

25. Mr. HUDSON suggested that the Commission might at least be able to reach general agreement on the following text, as guidance to the special rapporteur:

"1. The Commission notes that, in the present state of international law and practice, it is possible to say that the minimum width of the territorial sea of each coastal State is three marine miles, but it is not possible to say that any maximum width has been established. It notes also, however, that few States have fixed a width in excess of twelve miles.

"2. The Commission thinks it desirable that a greater uniformity in the delimitation of the territorial sea should be brought about, and to this end it suggests that no coastal States should fix a greater width of its territorial sea than twelve miles."

26. The CHAIRMAN put to the vote Mr. Spiropoulos' amendment to Mr. Kozhevnikov's proposal.

Mr. Spiropoulos' amendment was adopted by 10 votes to 1 with 1 abstention.

27. The CHAIRMAN then put to the vote Mr. Kozhevnikov's proposal as thus amended.

Mr. Kozhevnikov's proposal as thus amended was adopted by 9 votes to 2 with 1 abstention.

28. Mr. HSU said he had voted against Mr. Kozhevnikov's proposal not because he was opposed to postponement of a decision but because the proposal precluded discussion of Mr. Hudson's text, which appeared to him both sound and useful.

ARTICLE 5: BASE LINE [6]

29. The CHAIRMAN invited the Commission to pass to the consideration of article 5 of the Draft Regulation contained in the special rapporteur's report.

30. Mr. FRANÇOIS said that the question of the base-

[6] Article 5 read as follows:

"1. As a general rule and subject to the provisions regarding bays and islands, the breadth of the territorial sea is measured from the line of low-water mark along the entire coast.

"2. Nevertheless, where a coast is deeply indented and cut into, or where it is bordered by an archipelago, the base-line becomes independent of the low-water mark and the method of base-lines joining appropriate points on the coast must be employed. The drawing of base-lines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within these lines must be sufficiently closely linked to the land domain to be subject to the régime of internal waters.

"3. The line of low-water mark is that indicated on the charts officially used by the coastal State, provided the latter line does not appreciably depart from the line of mean low-water spring tides.

"4. Elevations of the sea bed situated within the territorial sea, though only above water at low tide, are taken into consideration for the determination of the base line of the territorial sea."

line had been dealt with at The Hague Conference for the Codification of International Law in 1930. Since then there had been the very important judgment of the International Court of Justice in the *Fisheries Case* between the United Kingdom and Norway, a judgment which had been rendered by 10 votes to 2.[7] As a preliminary issue, the Commission would have to decide whether it wished to enter into the substance of the problem of the base-line, or whether it would confine itself to endorsing the judgment of the Court.

31. Mr. AMADO said that paragraph 1 of article 5 reproduced almost exactly the text prepared by Sub-Committee No. II[8] of the Second Committee of The Hague Conference, the only difference being the introduction of the words "As a general rule" in Mr. François' draft.

32. He supported the special rapporteur's formula recognizing the low-water mark as the line from which to measure the breadth of the territorial sea. That standard had for some time been gaining ground both in theory and in the practice of States and had recently received the sanction of the International Court, which had declared in its judgment in the *Fisheries Case*:

> "The Court has no difficulty in finding that, for the purpose of measuring the breadth of the territorial sea, it is the low-water mark as opposed to the high-water mark, or the mean between the two tides, which has generally been adopted in the practice of States. This criterion is the most favourable to the coastal State and clearly shows the character of territorial waters as appurtenant to the land territory."[9]

33. Paragraph 3 of article 5 also closely followed the Report of Sub-Committee No. II, but he considered that the proviso should be deleted, since, if the low-water mark in official charts departed appreciably from the line of mean low-water spring tides, those charts would not be accurate and their validity would be questioned by any legal tribunal.

34. The principle contained in paragraph 4, which also appeared in the Report of Sub-Committee No. II, could be accepted without difficulty.

35. That, however, was not the case with paragraph 2 of Mr. François' text, which had no counterpart in the draft prepared at The Hague Conference. There, in his opinion, the special rapporteur had gone too far. The expression "deeply indented and cut into" could give rise to doubts which would allow States to fix their base-line in a manner more consonant with their own interests than with those of international law and the freedom of the seas. States would be tempted to try to demonstrate that their coast-line corresponded to that definition, in order to claim the right to adopt the method of straight lines between appropriate points on the coast.

36. The special rapporteur had obviously been influenced by the judgment of the International Court in the *Fisheries Case,* but it must be remembered that that judgment related to the very special and altogether unique configuration of the Norwegian coast-line. The special nature of the case was amply demonstrated by the considerations which had governed the investigation of the Norwegian Commission appointed by Royal Decree in 1911 on the delimitation of the territorial waters of Finnmark, to which Gidel referred in his book *Le droit international public de la mer* (vol. III, at p. 643). He doubted, therefore, whether a rule applicable to the special configuration of the Norwegian coast-line could be elevated to the status of a general rule as was done in paragraph 2 of article 5.

37. Another factor had rendered the *Fisheries Case* a special one, and that was the part played in it by the concept of "historic waters". Although the recognition of historic titles to certain waters was not the only consideration upon which the judgment of the Court had been based, the Court had given a good deal of weight to the concept of *possessio longi temporis,* and Judge Hackworth had declared his concurrence in the operative part of the judgment for the reason that he considered the Norwegian Government to have proved "the existence of an historic title to the disputed areas of water".

38. For the aforementioned reasons, he proposed the deletion of paragraph 2. The succeeding articles on bays, islands, groups of islands, straits, and the delimitation of the territorial sea at the mouth of a river, adequately covered the problems associated with establishing a base-line on deeply indented coasts. Should disputes arise in the future involving coast-lines with a special configuration such as that of Norway, the tribunal concerned would be guided by the judgment of the Court in the *Fisheries Case.*

39. Mr. HUDSON, referring to the two questions posed by the special rapporteur, said there was no reason why the Commission should not enter into the substance of article 5, which was crucial to the whole draft and, in his opinion, even more important than article 4.

40. He regretted that such prominence should have been given by the special rapporteur to the Report of Sub-Committee No. II of The Hague Conference, a prominence which was hardly justified by the dubious quality of that report. The Sub-Committee had consisted of only thirteen representatives of the forty-eight States attending the Conference. It had sat for a fortnight only, and its report had never been considered by the Second Committee; nor was it mentioned, as was the Report of Sub-Committee No. I of the Second Committee, in the final act, or given any official status.

41. The answer to Mr. François' second question was that the Commission would have to pay a great deal of attention to the judgment of the International Court in the *Fisheries Case,* since it was the first authoritative pronouncement on the matter and removed much of the confusion which hung like a haze round the Conference of 1930. The Court in its judgment did not lay

---

[7] *Fisheries Case,* Judgment of December 18th, 1951: *I.C.J. Reports 1951,* p. 116.

[8] See the Report of Sub-Committee No. II, League of Nations Publication, *V. Legal, 1930, V. 9* (document C.230. M.117. 1930. V), Annex II.

[9] Judgment, *op. cit.,* p. 128.

down any mandatory solution for determining the base-line of a deeply-indented coast. It was open to States to adopt the approach advocated by the Court and reproduced by the special rapporteur in the second sentence of paragraph 2 in article 5. It would be remembered that the Court had also declared that, in drawing base-lines, States were justified in taking economic considerations into account. He saw no reason why the Commission should contest the validity of the principles laid down in the Court's judgment which, to some extent, had been incorporated by the special rapporteur in his draft.

42. He considered paragraph 1 of article 5, based on a text prepared by Sub-Committee No. II of The Hague Conference, objectionable in that it would be applicable only to a coast-line which confronted the sea, and that was frequently not the case. As at present formulated, paragraph 1 begged the question, and he hoped Mr. François would draw on his vast store of knowledge on the subject under consideration to elucidate the meaning of "low-water mark" and explain whether any account was to be taken of the eighteen-year period after which the tides changed. He (Mr. Hudson) was against elevating the line of the low-water mark to a position of such importance.

43. Referring to paragraph 3, he thought that the definition of the low-water mark as the line of mean low-water spring tides was not clear. Furthermore, to accept a line indicated on official charts which, incidentally, frequently omitted to show the low-water mark properly, would be inconsistent with the judgment of the Court.

44. There was one approach to the whole problem of the base-line which had not been mentioned by the special rapporteur, and it was that offered by a provision incorporated in six treaties concluded by the United States with other governments in the early twenties, which read as follows:

> "The Parties declare that it is their firm intention to uphold the principle that three marine miles extending from the coast-line outwards and measured from the low-water mark constitute the proper limits of territorial waters."

"Extending from the coast-line outwards" was, of course, the operative phrase and might conveniently be considered in relation to a State like Cuba which had an unusual coast-line, for long the subject of diplomatic correspondence. The coast of that State consisted of a long line of reefs enclosing vast areas of water. The Spanish Government had proclaimed that line as the base-line for the territorial sea and the areas within the reefs accordingly became inland waters. Various governments admitted the propriety of that claim and the line was referred to as an exterior or political coast-line. Such a concept was endorsed by the judgment of the Court in the *Fisheries Case*.

45. The definition of the coast-line was necessary and must be dealt with by reference to bays and off-shore islands, since many States, such as Norway, to some extent the Netherlands, Saudi Arabia in its law of 1949, and Egypt in its law of 1951, drew their base-line outside the outermost islands.

46. Mr. LAUTERPACHT said he intended to confine his remarks to paragraphs 1 and 2 of article 5, though he might have to refer to articles 6 and 10 which were relevant to the problem of the base-line.

47. The special rapporteur had made judicious and selective use of the elements of the Court's judgment in the *Fisheries Case* and had practically adopted in its entirety its standard of the straight line to replace the low-water mark line. On the other hand, although the Court had found that no ten-mile rule existed in respect of bays and islands, Mr. François appeared to adopt such a rule, whether *de lege ferenda* or *de lege lata*.

48. In paragraph 1 the special rapporteur seemed to be following the report of Sub-Committee No. II of The Hague Conference and in that connexion Mr. Hudson's attention might be drawn to the fact that there was nothing in the judgment in the *Fisheries Case* to authorize the entire elimination of the low-water mark as a means of determining the base-line. Indeed the Court had declared, in its judgment, that:

> "Where a coast is deeply indented and cut into, ... the base-line becomes independent of the low-water mark, and can only be determined by means of a geometric construction. In such circumstances the line of the low-water mark can no longer be put forward as a rule requiring the coast-line to be followed in all its sinuosities, ..." [10]

In other words, the low-water mark was still a presumptive base-line, although it was recognized that it might yield to the principle of straight base-lines. He therefore had no objections of substance to paragraph 1; he welcomed it.

49. As the judgment of the Court in the *Fisheries Case* was rendered by an overwhelming majority, namely by ten votes to two, it should be treated with the greatest respect and the special rapporteur was perhaps right in treating it as the starting point of a new development in the law. It had been stated by Mr. Hudson that the judgment had removed much of the confusion which reigned at the time of The Hague Conference. On the other hand, the judgment in its substantive aspects was based on subjective tests, some of which were reflected in paragraph 2 of article 5. For example, that paragraph stated that: "The drawing of base-lines must not depart to any *appreciable extent* ... the sea areas lying within these limits must be *sufficiently closely linked*". The nature of that subjective element had apparently been appreciated by the Court which had declared:

> "The delimitation of sea areas has always an international aspect; it cannot be dependent merely upon the will of the coastal State as expressed in its municipal law. Although it is true that the act of delimitation is necessarily a unilateral act, because only the coastal State is competent to undertake it,

[10] *Op. cit.*, pp. 128—129.

the validity of the delimitation with regard to other States depends upon international law." [11]

It was accordingly important to recognize, either in the text or in the commentary on it, that the validity of a delimitation by a State of its territorial sea was of international concern and subject to review by an international authority.

50. Mr. YEPES considered it was impossible to achieve a universally applicable solution to the problem of the drawing of base-lines, owing to the wide variations in the conditions of coasts. Nor could the Court's judgment in the *Fisheries Case* offer such a solution, since it related to a coast with highly individual characteristics. Some flexible formula would have to be sought which could be applied as appropriate to each case.

The meeting rose at 1 p.m.

[11] *Ibid.*, p. 132.

170th MEETING

Wednesday, 23 July 1952, at 9.45 a.m.

CONTENTS

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. 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) (*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 5 : BASE-LINE (*continued*)

2. Mr. FRANÇOIS, replying to some of the comments made on article 5, said he realized that he was not proof against criticism for having borrowed the whole article, either from the report of Sub-Committee No. II of the Second Committee of the Conference for the Codification of International Law of 1930 or from the judgment of the International Court in the *Fisheries Case* between Norway and the United Kingdom.

3. He could not agree with Mr. Hudson, who had reproached him for having to a great extent followed the report of Sub-Committee No. II, that its work was devoid of merit. That Sub-Committee, under the chairmanship of Mr. Göppert, had consisted of thirteen members and had been assisted by a committee of experts including the well-known United States authority, Mr. Boggs. The committee of experts had had as chairman Admiral Surie of the Netherlands, a recognized authority on matters pertaining to the territorial sea, who had participated in The Hague Peace Conference and the London Naval Conference.

4. Until the previous meeting he (Mr. François) had never heard any criticisms of the work of Sub-Committee No. II of the kind advanced by Mr. Hudson. On the contrary, the general opinion hitherto had been that the draft articles prepared by it were a valuable contribution. That opinion was shared by one of the most distinguished authorities on the subject, Mr. Gidel. In the circumstances, the Commission might well be guided by the work of the Sub-Committee.

5. The question of base-lines raised a general issue connected with the method of dealing with highly specialized matters on which members of the Commission did not have the necessary technical knowledge. There were three possible courses of action: the Commission could either refer such matters to governments, consult experts, or derive its conclusions from published expert opinion. If the last-mentioned course were chosen, the report should indicate clearly the material on which the Commission had drawn, since governments might wish to instruct their own experts to examine it. It appeared to him highly dangerous for the Commission itself to modify the conclusions of technical experts. For that reason he would hesitate before accepting any substantial amendments to texts derived from the report of Sub-Committee No. II.

6. As regards the word "entire" in paragraph 1, to which Mr. Hudson appeared to object particularly, he would have no objection to its deletion, since it was apparent from the provisions of paragraph 2 that paragraph 1 could not apply to all coasts.

7. As Mr. Amado had criticized paragraph 3, he would refer him to the commentary [1] on the report of Sub-Committee No. II, which brought out clearly the meaning of the article.

8. The Preparatory Committee for the Codification Conference had been aware of the different interpretations to which the expression "low-water mark" might lend itself, and had stated that that was a technical point to which the attention of governments should be

[1] Acts of the Conference for the Codification of International Law, Vol. I, League of Nations Publication (document C. 351, M.145. 1930. V), p. 131; Report of the Second Commission, League of Nations Publication *V. Legal, 1930. V. 9* (document C.230, M.117, 1930. V), p. 11.