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**Summary record of the 170th meeting**

Topic:  
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the validity of the delimitation with regard to other States depends upon international law.”<sup>11</sup>

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.

<sup>11</sup> *Ibid.*, p. 132.

### 170th MEETING

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

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*Chairman*: Mr. Ricardo J. ALFARO.

*Rapporteur*: Mr. Jean SPIROPOULOS

*Present*:

*Members*: Mr. Gilberto AMADO, Mr. Roberto CORDOVA, Mr. J. P. A. FRANÇOIS, Mr. 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<sup>1</sup> 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

<sup>1</sup> 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.

drawn in order that agreement might be reached. The expression "line of mean low-water spring tides" had been adopted after careful consideration by experts. That formula took into account the effect of the moon and storms, and there was no valid reason why the Commission should consider itself competent to find a better one.

9. Mr. HUDSON had criticized paragraph 4 on the grounds that it was incomprehensible. Sub-Committee No. II, however, could not be held responsible since such a provision occurred in the North Sea Fisheries Convention of 1882 and, as far as he knew, no doubts had hitherto been raised as to its meaning which was that, even if an elevation of the sea bed was only uncovered at low tide, provided it was situated within the territorial sea, the limits of the territorial sea would thereby be extended further out into the high seas. That point of view corresponded with the observation by the Preparatory Committee of The Hague Conference on the replies of governments on point VI (definition of an island) in the questionnaire. That observation read as follows:

"A compromise may be contemplated. It will consist in allowing an island (i.e., an isolated island) to have its own territorial waters only if it is above water at high tide, but in taking islands which are above low-water mark into account when determining the base-line for the territorial waters of another island or the mainland, if such islands be within those waters."<sup>2</sup>

10. He was extremely gratified that Mr. Lauterpacht should appear ready to recognize that the judgment of the International Court in the *Fisheries Case* foreshadowed the future development of law in respect of base-lines. He (Mr. Lauterpacht) seemed, however, to detect a contradiction in the attitude of the special rapporteur in accepting the decisions of the Court for one article and departing from them in others, notably articles 6 and 10. He would therefore refer the Commission to part of his comment on article 6 which read:

"In its judgment of 18 December 1951 in the *Fisheries Case*, the International Court of Justice pointed out that, although the ten-mile rule with regard to bays 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. The Court considers that consequently the ten-mile rule has not acquired the authority of a general rule of international law.

"The rapporteur has nevertheless inserted the Sub-Committee's article in article 6, since the Commission's task is not merely to codify existing law but also to prepare the progressive development of the law"<sup>3</sup>

<sup>2</sup> Conference for the Codification of International Law, Bases of Discussion, vol. II. Territorial Waters. League of Nations Publication, V. *Legal*, 1929. V. 2 (document C.74, M.39, 1929. V), p. 54.

<sup>3</sup> A/CN.4/53 (mimeographed English text, p. 26; printed French text, comment to article 6, paras. 2—3).

11. In his comment on article 10, he had quoted the following observations by the Court:

"The Court now comes to the question of the length of the base-lines drawn across the waters lying between the various formations of the 'skjaergaard'. Basing itself on the analogy with the alleged general rule of ten miles relating to bays, the United Kingdom Government still maintains on this point that the length of straight lines must not exceed ten miles.

"In this connexion, the practice of States does not justify the formulation of any general rule of law. The attempts that have been made to subject groups of islands or coastal archipelagoes to conditions analogous to the limitations concerning bays (distance between the islands not exceeding twice the breadth of the territorial waters, or ten or twelve sea miles), have not got beyond the stage of proposals."<sup>4</sup>

He had thereafter added that he had "inserted article 10 not as expressing the law at present in force, but as a basis of discussion, should the Commission wish to study a text envisaging the progressive development of international law on this subject"<sup>5</sup>.

12. He did not therefore think that Mr. Lauterpacht's criticism was well founded. There was an essential difference between articles 6 and 10, which related to new rules of law that, in the opinion of the Court, could not yet be considered as being in force, and article 5, which embodied the two rules in force for determining base-lines.

13. The Commission would in no way derogate from the judgment of the Court in the *Fisheries Case* as a whole if, in pursuance of its task of promoting the progressive development of international law, it were to adopt the articles he had proposed.

14. Both Mr. Lauterpacht and Mr. Amado had expressed dissatisfaction with the vagueness of paragraph 2 of article 5, and he admitted the force of that criticism, particularly with regard to such phrases as "deeply indented" and "base-lines must not depart to any appreciable extent from the general direction of the coast". The Court had not achieved greater precision, and he doubted whether the Commission would be more successful. It would therefore be well advised to follow the directives suggested by the Court.

15. Mr. Lauterpacht had rightly observed that the absence of definite guidance in paragraph 2 might result in having to submit a dispute on its interpretation to a judicial body or an arbitral tribunal. It was a matter of common knowledge, however, that such disputes were liable to arise in connexion with far more specific provisions, and it was one of the duties of States, as members of the international community, to submit such disputes to peaceful settlement.

16. Mr. Amado had argued with good reason that the judgment of the Court related to a very special case and that great care must be exercised in giving it general

<sup>4</sup> A/CN.4/53 (mimeographed English text, p. 30; printed French text, comment to article 10, para. 2).

<sup>5</sup> *Ibid.* (printed French text, comment to article 10, para. 3).

application, but the Court had not limited itself solely to the case of Norway. It had declared, for example, that: "Where a coast is deeply indented and cut into, as is that of Eastern Finnmark... the base-line becomes independent of the low-water mark..."<sup>6</sup> and it was well known that such conditions obtained elsewhere, as, for example, in Iceland and Scotland.

17. In that connexion, he failed to understand the suggestion implicit in Mr. Yepes' comments at the previous meeting that rules appropriate to Europe would not be applicable to the American continent and could not form part of a general rule.

18. Mr. YEPES observed that all he had wished to emphasize was that the provisions of paragraph 2 of article 5 would not be applicable to certain areas of the world and could not therefore be elevated to the status of a universal rule.

19. Mr. LAUTERPACHT thanked the special rapporteur for his detailed and conscientious reply to the comments of members on article 5. He wished again to focus attention on the somewhat vague, discretionary and subjective element implicit in the judgment of the Court in regard to the drawing of base-lines, in view of which some provision must be made, perhaps in article 5, for the impartial determination of the legitimacy of the base-lines used.

20. In support of his argument, he drew the attention of the Commission to such expressions as "reasonable" and "moderate" used by the Court in considering the legitimacy of certain claims made by the Norwegian Government, and to its emphasis on the need to make use of small-scale maps in determining base-lines. He hoped those elements would be duly considered in great detail by the special rapporteur in preparing his next report.

21. Mr. Amado had argued that the judgment of the Court in the *Fisheries Case* was confined to special circumstances arising from the particular configuration of the Norwegian coast. There were a number of passages in the judgment to support that view, as for example: "Such a coast, viewed as a whole, calls for the application of a different method".<sup>7</sup> That argument that the method of straight lines was imposed by particular geographical conditions, had also been advanced by writers such as Gidel and Boggs. He was still inclined, however, to agree with the special rapporteur that the Court had applied a general principle to the specific case of Norway, and his view was confirmed by the following statement of the Court:

"Consequently, the Court is unable to share the view of the United Kingdom Government that 'Norway, in the matter of base-lines, now claims recognition of an exceptional system'. As will be shown later, all that the Court can see therein is the

application of general international law to a specific case."<sup>8</sup>

22. As he did not attach a great deal of importance to the question whether the judgment of the Court was *de lege lata* or *de lege ferenda*, the contradiction between article 5 and articles 6 and 10 in the special rapporteur's draft was of no great moment. The special rapporteur's work on article 6 was particularly valuable, since the judgment of the Court in the *Fisheries Case* lent itself to the interpretation that the legal concept of a bay had been abolished altogether, a concept which Mr. François had succeeded in salvaging.

23. Mr. KOZHEVNIKOV said that, as some speakers had referred to article 6 in the course of the discussion on article 5, he was bound to remind the Commission of the objections he had raised to that article at the 164th meeting.<sup>9</sup>

24. Mr. YEPES proposed that the first sentence of paragraph 2 in article 5 be replaced by the following text:

"As an exception, in certain parts of the world where special geological, morphological or historical circumstances necessitate a special régime, because the coast is deeply indented or cut into or because there are islands or archipelagoes in its immediate vicinity, the base-line may be independent of the low-water mark. In this special case, the method of base-lines joining appropriate points on the coast may be employed."

The purpose of his amendment was to emphasize that paragraph 2 related to a particular rule which was not universally applicable, and that it was permissive, but not obligatory on States, to adopt the straight-line method where the coast-line was deeply indented or cut into. He was against that provision being mandatory as in the text framed by the special rapporteur.

25. Mr. KOZHEVNIKOV said that the Commission was holding a preliminary discussion on matters of principle and had agreed not to put to the vote article 4 in Mr. François' report. In his view, it would hardly be appropriate to vote on article 5 either. It should be enough merely to instruct the special rapporteur to take into account the views expressed and proposals submitted by members.

26. The CHAIRMAN observed that the Commission's decision on article 4 related to that article only. An amendment to article 2 for example, had been put to the vote. The Commission must obviously follow the procedure most appropriate to each article, and it was sometimes desirable to ascertain the general consensus of opinion by means of a vote. It was always open for any member of the Commission to propose that a particular text be not voted upon.

27. Mr. SPIROPOULOS agreed with the Chairman and considered that, as views on article 5 did not appear

<sup>6</sup> *Fisheries Case*, Judgment of December 18th, 1951: *I.C.J. Reports 1951*, p. 128—129.

<sup>7</sup> *I.C.J. Reports 1951*, p. 129.

<sup>8</sup> *Ibid.*, p. 131.

<sup>9</sup> See summary record of the 164th meeting, para. 22.

to differ very significantly, the Commission might vote on the principles it embodied and on Mr. Yepes' amendment, without in any way binding itself as to wording.

28. Mr. FRANÇOIS said he would appreciate being given more precise indications of the trend of opinion in the Commission. A vote on article 5 would be valuable as revealing the attitude of those members who had not expressed their views in the general debate.

29. He considered Mr. Yepes' amendment to be largely a matter of wording, and it would be remembered that the Commission had decided not to concern itself with drafting at the present stage. He was unable to understand the purpose of the words "in certain parts of the world" in that amendment.

30. Mr. SPIROPOULOS suggested that the special rapporteur's preoccupation would be met by the deletion of the words "geological, morphological or historical" in Mr. Yepes' amendment.

31. Mr. YEPES accepted Mr. Spiropoulos's suggestion. He also accepted the deletion of the words "in certain parts of the world".

32. Mr. ZOUREK doubted whether it was appropriate to mention archipelagoes in a general provision relating to deeply indented coast-lines. Archipelagoes should surely be dealt with in connexion with article 10.

33. Despite Mr. François' explanations, he still found paragraph 4 obscure. Was a drying rock to be considered as an island? In the next draft to be prepared by the special rapporteur some strictly technical information would have to be included to make the provisions comprehensible.

34. Mr. HUDSON said he was unable to understand the purpose of Mr. Yepes' amendment, particularly the significance of the words "geological, morphological or historical".

35. Referring to paragraph 4, he said he was unable to find any provision of that kind in the North Sea Fisheries Convention of 1882.<sup>10</sup>

36. It had been suggested that the Commission might have to discuss the ten-mile rule in connexion with article 6, but that rule could only have any meaning if the territorial sea were delimited at three miles. Furthermore, the practice of States did not appear to justify the claim for its existence; for example, Argentina had for years claimed, as inland waters, bays which in one case were at least forty miles wide at the entrance, while similarly Canada claimed the whole of Hudson Bay, and such claims had not been contested. It was therefore entirely premature to consider the ten-mile rule until the breadth of the territorial sea had been established.

37. Mr. FRANÇOIS said that, if the Commission accepted the principle in paragraph 4, its drafting could always be improved. As he had framed it, the provision

related only to drying rocks, as he had followed Sub-Committee No. II in distinguishing between drying rocks and islands. The Harvard Research draft, on the other hand, applied the same rule to both.

38. Mr. el-KHOURI said it would undoubtedly be difficult to find a universally applicable rule for drawing base-lines. He found the principles in article 5, however, acceptable.

39. He did not, on the other hand, think that Mr. Yepes' amendment did anything to mitigate the difficulties of the problem and he was unable to understand the relevance of geographical, morphological and historical circumstances.

40. Mr. HUDSON proposed the deletion of the words "along the entire coast" from paragraph 1 of article 5.

41. Mr. FRANÇOIS accepted Mr. Hudson's amendment.

42. The CHAIRMAN said he intended to put each paragraph of article 5 to the vote separately, it being understood that the Commission was voting on substance rather than on wording.

*Paragraph 1, as amended, was approved by 8 votes to none, with 1 abstention.*

*Mr. Yepes' amendment, as modified, to the first sentence of paragraph 2 was approved by 5 votes to 1, with 4 abstentions.*

*Paragraph 2, as amended, was approved by 10 votes to 1, with 1 abstention.*

43. Mr. AMADO proposed that paragraph 3 be voted in two parts, the first up to the words "used by the coastal State". As he had already explained, the latter part of the paragraph seemed to him entirely superfluous, since an official chart which departed appreciably from the line of mean low-water spring tides would not be used for drawing the base-line. Furthermore, such a provision was dangerously subjective and might give rise to ambiguity. Who was to determine whether a line departed appreciably from the line of mean low-water spring tides?

*The words: "The line of low-water mark is that indicated on the charts officially used by the coastal State" in paragraph 3 were approved unanimously.*

44. Mr. SCELLE asked whether it was Mr. Amado's wish that the second clause in paragraph 3 should simply be omitted, or whether he wished to replace it by some other criterion. Not all States possessed expert hydrographic services, and an international body of the standing of the Commission could not assume that official charts were always accurate.

45. Mr. AMADO still felt that the cases where official charts were more than slightly inaccurate were so infrequent as to make it unnecessary to introduce the element of subjective appreciation contained in the second clause.

46. Mr. HUDSON said that the English and French texts of paragraph 3 did not tally, the phrase "the line

<sup>10</sup> See text in de Martens, *Nouveau Recueil Général*, 2ème série, vol. IX, pp. 556—563.

of mean low-water spring tides" not being an exact translation of the phrase "*la laisse moyenne des plus basses mers bimensuelles et normales*". The English text was actually preferable to the French, since the lunar months included two neap tides as well as two spring tides. There was no reason why the Commission should repeat the error into which a sub-committee of the 1930 Conference had fallen.

47. Mr. FRANÇOIS said that he would ascertain before the next session what exactly had been the criterion which Sub-Committee II of the Second Commission of the Codification Conference had intended to lay down.

48. He drew Mr. Amado's attention to the passage from that Sub-Committee's report which he had quoted in his own report.<sup>11</sup> The Sub-Committee had pointed out that, in practice, different States employed different criteria to determine the line of low-water mark, one being the low-water mark indicated on the charts officially used by the coastal State, and the other that referred to in the second clause of his draft for paragraph 3. He had followed the Sub-Committee in giving preference to the first criterion, as it appeared to be the more practical, but in order to guard against abuse, had added a proviso that the line indicated on the chart must not depart appreciably from the more scientific criterion.

49. Mr. YEPES agreed that the Commission must ensure that the line of low-water mark conformed to a scientific criterion. He therefore supported the second clause of paragraph 3. If a dispute arose as to whether a chart did or did not "appreciably" depart from that criterion, it could be referred to an international tribunal.

50. The question of bringing the English and French texts into line could well be left until the next session.

51. Mr. AMADO said that, in the light of the explanations given by the special rapporteur, he would be prepared to accept the second clause of paragraph 3.

52. Mr. SCELLE wondered, however, whether the Commission could not find a more general criterion than the "scientific" criterion set forth in that clause, since first it was apparently open to question on scientific grounds, and secondly it would not exclude charts which were unacceptable on other grounds, as being out of date, for instance.

53. Mr. SPIROPOULOS recalled that the Sub-Committee whose recommendations had been challenged had been composed of scientific experts. He did not think the Commission was in a position to criticize its recommendations on a scientific question. It must either accept them or, if it was not satisfied, set up a committee of experts itself.

54. Mr. HUDSON said that he would merely point out

that the Sub-Committee's recommendations meant two wholly different things in English and in French.

55. Mr. LAUTERPACHT felt that the Commission was in a position to decide whether the first clause in paragraph 3 should be subject to a proviso along the lines of the second clause, on the understanding that before the next session the special rapporteur would attempt to clarify the question raised by Mr. Hudson.

*On the above understanding the second clause of paragraph 3 was approved by 8 votes to 2, with 3 abstentions.*

56. Mr. SCELLE said that he had abstained because he could not vote for a provision which he did not understand.

57. The CHAIRMAN then put to the vote paragraph 3 as a whole.

*Paragraph 3 was approved by 10 votes to 1, with 2 abstentions.*

*Paragraph 4 was approved by 12 votes to 1.*

*Article 5 as a whole, as amended, was approved by 8 votes to 1, with 3 abstentions.*

58. Mr. SCELLE said that he had abstained in the vote on article 5 as a whole, because he had voted in favour of some of the paragraphs and against others.

59. Mr. KOZHEVNIKOV said that he had abstained in the vote on article 5 as a whole because he had abstained in the vote on the amendment proposed by Mr. Yepes to paragraph 2. If that amendment had not been adopted, he could have voted for the article as a whole.

60. Mr. ZOUREK said that he had abstained for the same reasons as Mr. Kozhevnikov, and also because he felt that the drafting amendments he had suggested should be taken into account.

61. The CHAIRMAN then drew attention to article 13, which was the next article which the Commission had decided to consider.

62. Mr. LAUTERPACHT, on a point or order, said that in his view the question of bays was quite as important as the question of base-lines. He therefore proposed that article 6 be added to the list of the articles which the Commission was to consider.

63. Mr. YEPES seconded Mr. Lauterpacht's proposal.

64. Mr. FRANÇOIS recalled that the point had already been made that article 6 could not be dealt with as long as the breadth of the territorial sea remained undecided.

65. Mr. SPIROPOULOS said that he would have agreed with Mr. François if he had been sure that the Commission would propose a definite figure for the limits of the territorial sea. As he was not sure, he would support Mr. Lauterpacht's proposal, but would suggest that article 6 be considered after the other articles which the Commission had already decided to consider, namely articles 13 and 3.

<sup>11</sup> A/CN.4/53 (mimeographed English text, p. 22; printed French text, comment to article 5, para. 1).

66. Mr. el-KHOURI associated himself with the suggestion put forward by Mr. Spiropoulos.

*After further discussion Mr. Spiropoulos' suggestion was adopted by 8 votes to 2 with 1 abstention.*

#### Programme of work

67. The CHAIRMAN felt it necessary to draw attention to the fact that the time then allocated for final consideration of the draft on arbitral procedure had already been used up.

68. He thought all members of the Commission were agreed on the importance of reaching at least general decisions on the régime of the territorial sea. In view of the very careful work done by the Standing Drafting Committee it might not be necessary to devote as much time to arbitral procedure as had been estimated. Unless a previous decision by the Commission were reversed, it would also, however, have to consider at its present session the question of the review of its Statute. In that connexion he understood that some members felt it would be inopportune to review the Statute, since the term of office of the present members of the Commission would end in 1953. Moreover, the Commission had stated in its report on its third session that it was "unable to say that either lack of clarity in the statutory provisions, or inflexibility of the procedures prescribed, has interfered with its achievement of 'rapid and positive results'".<sup>12</sup>

69. Mr. CORDOVA recalled that, as was clear from paragraph 70 of the report of the Commission on its third session, his appointment as special rapporteur on the question of review of the Statute had been subject to acceptance by the General Assembly of the Commission's recommendation that it be placed on a full-time basis. As that recommendation had not been accepted, he had felt it unnecessary to prepare a report. In the circumstances he did not believe that the Commission should attempt to submit recommendations for revision of its Statute, which, as the Chairman had pointed out, had not hampered the Commission in its work. Moreover, any suggestions the Commission submitted would only give rise to alternative suggestions by members of the General Assembly, and the result would be to help neither the General Assembly nor the Commission itself.

70. Mr. LIANG (Secretary to the Commission) said that he would merely add to what Mr. Córdova had said that the drafting of the Statute had been a lengthy and thorough affair and that it might be unwise to attempt to revise it at the present time, particularly since it had been the general view at the last session of the General Assembly that more time was needed before the functioning of the Commission under its present Statute could be evaluated.

71. Mr. HSU recalled that all the procedures which had been laid down for the Commission had been intended as provisional. The Commission had been asked by the General Assembly to give its views on those procedures in the light of its experience, in order to benefit not the present members of the Commission but their successors. In the circumstances, however, he agreed that it might be undesirable to take up the question at the present session.

72. Mr. LAUTERPACHT thought that all members of the Commission shared the Chairman's hope that further discussion of the articles in the draft on arbitral procedure would be brief. He recalled, however, that the Commission had agreed that those articles should be accompanied by explanations, and he understood that it had been the Commission's previous practice to examine such explanations sentence by sentence. That might take time. In any case he would be opposed to any undue haste about a question which was so important and had, so far, been the subject of such careful consideration.

73. With regard to reviewing the Commission's Statute, he agreed with Mr. Córdova, so far as the present session was concerned, but felt that the Commission should devote some time towards the close of its next session to tabulating the results of its experience over the past five years for the benefit of those members who would succeed the present members. He also felt that it should devote at least two or three days' consideration at its present session to the machinery for continuing its work between the present session and the next, a question on which, as he had previously indicated, he would have a number of observations to make.

74. Mr. SCALLE recalled that the Commission had already decided that its report to the General Assembly on the present session should include the draft articles on arbitral procedure, with explanations. He had only just received the final text of those articles from the Standing Drafting Committee, and because of the short time at his disposal, and also in order to keep the question of arbitral procedure to a proportionate length in the Commission's report, he was confining himself to preparing such explanations as appeared to him necessary to make clear the Commission's intentions. He did not think their consideration would take long, and he hoped no further discussion at all would be allowed on the articles themselves.

75. On the other hand he agreed with Mr. Lauterpacht that it was only the present members of the Commission who, from their experience, could make useful suggestions for improving its methods of work, and he felt that the Commission might well devote three or four meetings at the present session to considering that question.

76. The CHAIRMAN pointed out that the only question which the Commission had to decide at once was whether it wished to reverse its previous decision to review its Statute at its next three meetings.

77. Mr. HUDSON suggested that the question still

<sup>12</sup> *Official Records of the General Assembly, Sixth Session, Supplement No. 9 (A/1858) para. 70. Also in Yearbook of the International Law Commission, 1951, p. 138.*

remained whether the Commission wished the special rapporteur on that subject to submit a report to the next session.

78. The CHAIRMAN felt that that question could be considered when the Commission came to draw up the provisional agenda for the next session.

79. Mr. FRANÇOIS thought that it was difficult to separate the two questions. Some members of the Commission, for example, would only agree to deleting the item from the agenda of the present session if they knew that it would be taken up at the next session. He personally saw no possibility of adding that item to the already crowded agenda for the next session, and thought it would be perfectly possible to devote a few days' consideration to it at the present session.

80. Mr. SPIROPOULOS suggested that the Commission need take no final decision at present to delete from the agenda of the present session the item concerning review of the Statute; the item should merely be set aside for the time being with a view to allowing the Commission to continue consideration of the régime of the territorial sea, and thereafter to take up the draft articles on arbitral procedure, with explanations.

*Mr. Spiropoulos' suggestion was adopted by 12 votes to none, with 1 abstention.*

The meeting rose at 1.5 p.m.

### 171st MEETING

*Thursday, 24 July 1952, at 9.45 a.m.*

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*Chairman* : Mr. Ricardo J. ALFARO.

*Rapporteur* : Mr. Jean SPIROPOULOS

*Present* :

*Members* : Mr. Gilberto AMADO, Mr. Roberto CORDOVA, Mr. J. P. A. FRANÇOIS, Mr. 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 13 : DELIMITATION OF THE TERRITORIAL SEA OF TWO ADJACENT STATES<sup>1</sup>

2. Mr. FRANÇOIS drew attention to the various solutions to the problem of delimiting the territorial sea of two adjacent States indicated in the comment on Article 13 of his draft regulation. Those solutions would give the same line of delimitation in the theoretical case where the frontier was at right angles to the coast and the coast-line was absolutely straight. If the frontier was at 45 degrees to the coast-line, prolongation of the land frontier would be grossly unfair to one of the two States; if the coast-line was indented, it would be illogical to draw a line perpendicular to the coast at the point where the frontier reached the sea. Use of a median line appeared to be the only fair and logical solution in such cases; that line had been defined by the well-known American authority on such matters, Whittemore Boggs, as "a line every point of which is equidistant from the nearest point or points on the coast-lines of the two States".<sup>2</sup> That geometric concept was perhaps rather difficult for laymen to understand, and he himself had found it so, but he had every confidence in the expert qualifications of Mr. Whittemore Boggs.

3. As he had also indicated, however, the rule of the median line would not be applicable in certain exceptional cases. Those cases were not purely theoretical. He had referred, for example, to the case of the mouth of the Scheldt in the "Wielingen". At the 1930 Conference for the Codification of International Law, Mr. Barbosa de Magalhaes had suggested that there was one other case in Latin America which was really analagous, and he suggested that it was not perhaps necessary for the Commission to take those two cases into account. On the other hand, cases were not infrequent where the line of delimitation had to be drawn through the estuary of a river whose navigable channel did not follow the median line, and the line of delimitation would therefore present serious inconveniences; the Commission might consider that it was necessary to provide for cases of that kind.

4. Mr. HUDSON said that he had given careful consideration to the written and oral explanations of Mr. Whittemore Boggs concerning what he understood by the median line. He was not, however, entirely convinced, and hoped that the special rapporteur would further study the whole question, and particularly the results of applying the rule of the median line in particular cases. He himself had studied the question as it affected certain parts of the world, from a practical point of view, and feared that application of the rule of the median line would not be satisfactory in a

<sup>1</sup> Article 13 read as follows :

"The territorial sea of two adjacent States is normally delimited by a line every point of which is equidistant from the nearest point on the coastline of the two States."

<sup>2</sup> W. Boggs, "Delimitation of Seaward Areas under National Jurisdiction", *American Journal of International Law*, vol. 45 (1951), p. 256.