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Summary record of the 172nd meeting

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52. Mr. HUDSON said that, on the basis of the foregoing remarks, the Commission might give an answer to four questions which he would formulate as follows:

"1. Does the Commission wish to exclude the subject of article 13 from consideration?

"2. If not, does the Commission wish to repeat what was said concerning the continental shelf?

"3. If not, does the Commission wish to confide the problem to the special rapporteur?

"4. If so, does the Commission wish to suggest that the special rapporteur place himself in contact with experts?"

53. Mr. KOZHEVNIKOV said that, as he had not participated in the discussions on the continental shelf, he could not express any opinion on question 2.

54. Mr. FRANÇOIS asked whether an affirmative reply to question 3 would preclude the Commission from recommending the establishment of a mixed commission of experts and jurists.

55. Mr. SPIROPOULOS observed that an affirmative reply to question 3 would not prejudge the future action to be taken by the Commission on article 13.

56. Mr. SCELLE said that, by instructing the special rapporteur to continue his study of the problem, the Commission did not necessarily exclude the possibility of his recommending a similar solution to that adopted on the continental shelf.

57. Mr. YEPES agreed with Mr. Scelle.

The Commission replied in the negative to question 1 by 8 votes to 2 with 2 abstentions.

The Commission replied in the affirmative to question 3 by 9 votes to none with 3 abstentions.

58. Mr. LIANG (Secretary to the Commission) referring to question 4, pointed out that budgetary appropriations could not be considered by the General Assembly unless the Secretary-General were presented with a definite decision by the Commission and gave an estimate of the costs. It would therefore have to be established whether consultation of experts would involve expenditure. The Secretariat would want to be represented when a decision of this nature was to be taken, even in a private meeting.

59. Mr. HUDSON said he envisaged such consultation as purely informal and personal. The special rapporteur could do it by correspondence and it would cost nothing.

60. Mr. FRANÇOIS said that he could do no further useful work on article 13 without expert advice.

61. Mr. AMADO considered that there were many more pressing problems than the one under consideration on which the Commission should have the opinion of experts. He therefore thought it preferable for Mr. François to continue his work independently and for the Commission to decide at the next session whether or not to obtain expert assistance.

62. Mr. CÓRDOVA said that the course advocated by Mr. Amado would be a waste of time. The special rapporteur had already indicated his inability to make any progress without expert advice.

63. Mr. SPIROPOULOS observed that, if the Commission accepted Mr. Kozhevnikov's proposal, further work on article 13 would have to be postponed until the next session.

Mr. Kozhevnikov's proposal that the Commission decide at its next session whether or not to seek expert advice was rejected by 7 votes to 4 with 2 abstentions.

The Commission replied in the affirmative to question 4, formulated by Mr. Hudson, by 8 votes to 2 with 1 abstention.

64. Mr. el-KHOURI and Mr. YEPES said that they had voted in favour of an affirmative answer to question 4 on the understanding that the special rapporteur would consult experts in the manner indicated by Mr. Hudson.

65. Mr. CÓRDOVA pointed out that fees must be paid for expert advice.

66. Mr. HUDSON said he was certain that Mr. Boggs would not require payment for any advice he could render.

67. Mr. LIANG (Secretary to the Commission) said that if Mr. Hudson were right, no financial implications were involved in the Commission's decision on question 4.

The meeting rose at 1.25 p.m.

172nd MEETING

Friday, 25 July 1952, at 9.45 a.m.

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Chairman: Mr. Ricardo J. ALFARO.

Rapporteur: Mr. Jean SPIROPOULOS.

Present:

Members: Mr. Gilberto AMADO, Mr. Roberto CÓRDOVA, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Mr. Manley O. HUDSON, Faris Bey el-KHOURI, Mr. F.

I. KOZHEVNIKOV, Mr. H. LAUTERPACHT, Mr. 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 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 (*continued*)

2. Mr. ZOUREK said there was general agreement in the Commission that the information at its disposal on the delimitation of the territorial sea of adjacent States was not sufficient to enable it to give definite directives to the special rapporteur. Some members had indeed argued that it would be impossible to frame a generally applicable rule on that matter, but as it had been decided to retain article 13, the Commission must first acquaint itself more fully with existing practice so as to be in a position to determine whether the argument was well-founded. He accordingly submitted the following proposal:

> "The International Law Commission decides to consult governments, through the Secretary-General, on the delimitation of the territorial sea of two adjacent States, asking them in particular for information on the way in which they have solved the problem in practice."

He believed that replies could be received to that very specific question in time for the rapporteur to take them into account in preparing his next report.

3. Mr. FRANÇOIS said he could support Mr. Zourek's very useful proposal provided the enquiry was strictly limited to the existing method of delimitation. If that were done governments might be asked to provide the information by about 1 January 1953 so that he could discuss it with three or four experts before drawing up his next report.

4. Mr. YEPES considered Mr. Zourek's proposal a valuable one but, as a matter of form, rather than consulting governments he considered that the Commission should merely ask for information on the existing practice of States.

5. Mr. ZOUREK said that he did not wish to preclude governments from expressing their views as to what were the best means of delimiting the territorial sea of two adjacent States.

6. Mr. FRANÇOIS said that it could be left open to governments to append to the information supplied any comments they thought necessary.

7. Mr. HUDSON observed that what the Commission was interested to ascertain was not the practice of one State but of two adjacent States.

8. Mr. LIANG (Secretary to the Commission) said it was incumbent upon him to warn the Commission that enquiries couched in very general terms met with little response from governments. They replied with far greater alacrity to precise questions. The enquiry proposed by Mr. Zourek would probably demand a certain amount of study and it might be of assistance to governments if they were provided with the text of article 13 and the summary records of the discussions on it.

9. Mr. FRANÇOIS said he would be most unwilling to circulate the text of article 13 to governments at the present state, since the Commission had only discussed it in a very preliminary way. It would not be any great imposition on governments to ask them for information solely on the existing methods of delimiting their territorial sea with adjacent States.

10. Mr. LIANG (Secretary to the Commission) said that he had only been concerned to emphasize the need for framing the question clearly. In the form proposed by Mr. Zourek it lacked precision. He had only suggested that governments be provided with the text of article 13 in order to acquaint them with the nature of the problem.

11. Mr. YEPES, referring to Mr. Hudson's observation, said there could be no doubt that the Commission was not asking for information on unilateral delimitations of the territorial sea.

12. Mr. KOZHEVNIKOV expressed his support for Mr. Zourek's proposal since it was essential for the special rapporteur to have at his disposal all the relevant information to enable him to judge whether a general rule could be deduced from existing practice.

13. The CHAIRMAN put to the vote the substance of Mr. François' and Mr. Yepes' amendments to Mr. Zourek's proposal, namely that governments be asked to supply information on existing practice in delimiting the territorial sea of two adjacent States, and that it be left open to them to comment on that information.

The amendments were approved by 12 votes to 1.

The substance of Mr. Zourek's proposal, as amended, was approved by 12 votes to 1.

ARTICLE 3: JURIDICAL STATUS OF THE BED AND SUBSOIL (*resumed from the 165th meeting*)

14. The CHAIRMAN drew the attention of the Commission to article 3, which it had decided at its 165th meeting to examine at the request of Mr. Kozhevnikov whose principal objection to it was its omission of any reference to the air space above the territorial sea.[1]

[1] See summary record of the 165th meeting, para. 75.

15. Mr. KOZHEVNIKOV said that, since article 3 referred to the territory of a coastal State, there was no justification for omitting mention of the air space above the territorial waters, as it had been mentioned in article 2 of the text prepared at the Conference for the Codification of International Law of 1930. He accordingly proposed the addition at the end of paragraph 1 of the words " and also the air space above the territorial sea ".

16. He also proposed the deletion of paragraph 2, the meaning of which was obscure.

17. Mr. FRANÇOIS said that, as he had already indicated at the 165th meeting,[2] he had had two reasons, the first of which admittedly was not decisive, for omitting from paragraph 1 any mention of the air space. The first was that the Commission, in discussing the continental shelf, had decided not to deal with the air space above it. The second was that the air space was subject to special regulations which could not be dealt with in the draft under consideration.

18. It had been recognized at the Hague Conference that there was no customary law on passage through the air and that the matter was entirely regulated by general or special conventions. He would have no objection to following the text prepared at the Codification Conference on the matter.

19. Mr. CÓRDOVA suggested that the first reason mentioned by Mr. François was hardly convincing, since the reason why the Commission had decided not to deal with the air space above the continental shelf was that it was agreed that the waters above the continental shelf formed part of the high seas.

20. The situation with regard to the air space above the territorial sea on the other hand was very different. Defence needs were one of the main considerations why the sovereignty of the coastal State over its territorial sea was recognized, and control of the air space above that belt was also of vital interest to them.

21. Although no customary law existed on the air space, which was entirely regulated by conventions, the special rapporteur might consider the possibility of extending to it the principle of innocent passage.

22. Mr. FRANCOIS said he could not undertake such a study. Conventions on air navigation did not recognize the principle of innocent passage.

23. Mr. el-KHOURI supported Mr. Kozhevnikov's amendment to paragraph 1, but opposed the deletion of paragraph 2, since that paragraph would become essential if the amendment to paragraph 1 were accepted. The purpose of paragraph 2 would be to ensure that existing conventions on the air space were not prejudiced by the other provisions of the draft.

24. Mr. LAUTERPACHT expressed his willingness to support Mr. Kozhevnikov's amendments. It would open the door to misunderstanding if the air space were not mentioned in paragraph 1. The principle that the coastal State exercised sovereignty over the air space above it had been clearly recognized in the Convention relating to the Regulation of Aerial Navigation of 1919 and the Convention on International Civil Aviation of 1944.

25. He could not agree with Mr. François that paragraph 2 was necessary in order to leave no room for doubt that the right of innocent passage did not apply to the air space, since articles 14 and 15 clearly stated what was meant by the right of passage. The deletion of paragraph 2 could not lead to any misunderstanding.

26. Mr. HUDSON agreed with both of Mr. Kozhevnikov's amendments. Although Mr. el-Khouri was correct in arguing that the inclusion of paragraph 2 was due to the existence of conventions on the air space, none of them was applicable to the territorial sea and paragraph 2 was therefore unnecessary.

27. Mr. AMADO said he was in favour of Mr. Kozhevnikov's amendment to paragraph 1. Clearly if an attempt was made to define the territory of a coastal State, the air space above the territorial sea could not be omitted.

28. Mr. SPIROPOULOS declared his support for Mr. Kozhevnikov's amendments for the reasons adduced by Mr. Lauterpacht, Mr. Hudson and Mr. Amado.

29. Mr. ZOUREK supported Mr. Kozhevnikov's amendment to paragraph 1, since it was a rule of international law that the coastal State exercised sovereignty over the air space above its territorial waters. He was also in favour of the deletion of paragraph 2, which was ambiguous. What, for example, were " other rules of international law " in respect of the air space.

30. In reply to a question by Mr. el-KHOURI, Mr. FRANÇOIS said he was prepared to accept Mr. Kozhevnikov's amendment for the deletion of paragraph 2.

31. Mr. HUDSON said he was uncertain whether the expression " air space " was an appropriate one in the light of modern developments. He doubted whether the sovereignty of the coastal State was confined to that area alone. An American writer had recently suggested that " air space ", which had admittedly been used in the Convention on International Civil Aviation of 1944, should be replaced by " flight space ".

32. Mr. SPIROPOULOS considered the suggested alternative deplorable.

Mr. Kozhevnikov's amendment to paragraph 1 was adopted unanimously.

Mr. Kozhevnikov's amendment for the deletion of paragraph 2 was adopted by 10 votes to none with 2 abstentions.

33. The CHAIRMAN invited the Commission to consider article 6, in conformity with its decision of the previous meeting.

[2] *Ibid.*, paras. 65 and 67.

ARTICLE 6 : BAYS [3]

34. Mr. LAUTERPACHT said that, in moving the consideration of article 6, he had not intended that it be put to the vote.[4] He had simply wished to put forward some general considerations. The International Court of Justice in its judgment in the *Fisheries Case* had declared that the ten-mile rule on bays had not " acquired the authority of a general rule of international law ".[5] The special rapporteur, however, had in article 6 advocated the ten-mile rule — although possibly, *de lege ferenda* only.

35. In article 5, the special rapporteur had followed the Court in retaining the principle that base-lines must not depart appreciably from the " general direction of the coast ". It was arguable that as a bay was determined by drawing a line across the entrance from headland to headland, and that as that line necessarily followed the general direction of the coast, all bays were, according to the judgment of the Court, internal waters, in that they were not bays in the sense of international law. Moreover, the Court seemed prepared to assimilate to internal waters minor curvatures which were not bays. It seemed possible, therefore, to argue that the Court had abolished altogether the legal concept of a bay, the size of which was no longer of any significance unless great enough to alter the general direction of the coast. He attributed great importance to the legal concept of a bay and welcomed the fact that the special rapporteur endeavoured to rescue it from the apparent consequences of the Court's judgment.

36. The special rapporteur might also take into account, in preparing his next report, the fact that, as a result of the judgment in the *Fisheries Case,* part of straits previously regarded as high seas had become inland waters and therefore, unless special provision were made therefor, not even subject to the right of innocent passage.

37. It had been suggested that it would be difficult to discuss the width of the opening of a bay until a decision had been taken on the breadth of the territorial sea. He would submit that the interrelation of the two distances was not as close as it appeared, since otherwise States which adhered to the three-mile rule would have applied the six-mile rule to bays.

38. As was well known, however, the United Kingdom, like most other States adhering to the three-mile rule, had at the Codification Conference accepted the ten-mile rule for bays, a rule which had been endorsed by the Preparatory Committee and Sub-Committee No. II of the Second Committee of the Conference. It had been established from the replies of governments on that occasion that the great majority of States, which gave a direct answer to the questionnaire on the subject, adhered to the ten-mile rule for bays. It was only recently that it had been extended by certain States such as Egypt and Saudi Arabia. Apart from the special case of " historic bays " most legal authorities were in favour of the ten-mile rule.

39. Mr. CÓRDOVA said it had always been recognized that there was a connexion between the maximum breadth of the territorial sea and the maximum breadth, across the opening, which bays could have for them to be considered as inland waters. He wondered whether the special rapporteur had ever heard a rule formulated to the effect that the second figure should be three-and-a-third times the first.

40. He also asked whether the special rapporteur did not think that, in determining to what extent a bay was part of the territorial sea and to what extent it was part of inland waters, it was necessary to take into account not only its width across the opening, but also whether it made a deep or a shallow indentation into the coast-line in comparison with its width across the opening.

41. Mr. FRANÇOIS said that he was not altogether convinced by Mr. Lauterpacht's claim that the International Court of Justice had abolished the legal concept of a bay by adopting as a criterion the general direction of the coast-line, since the Court's judgment related only to a very heavily indented coast-line. Mr. Córdova's second question bore on the same point, but although it had often been claimed that there should be some ratio between the width of a bay across its opening and its depth as an indentation into the coast, no agreement had ever been reached.

42. There could surely be no doubt that there was a very close connexion between the maximum breadth of the territorial sea and the maximum width of bays, across the opening, although he had never heard it suggested that the second should be three-and-a-third times as great as the first. On the basis of the three-mile limit for the territorial sea it would have been logical to lay down a six-mile limit for bays, but it had been variously pointed out that it would be preferable to take a somewhat larger figure, and the practice had grown up of fixing the limit at ten miles. If the limit of the territorial sea was now raised to six miles, it would clearly be impossible to retain the figure of ten miles for bays ; the figure would have to be raised at least to twelve, and probably to fifteen or twenty miles.

43. Mr. AMADO agreed that there was an obvious connexion between the maximum breadth of the territorial sea and the maximum breadth of bays across the opening, for the reasons indicated by the special rapporteur. All members of the Commission knew that the ten-mile limit for bays had had its origin in the three-mile limit for the territorial sea. He agreed therefore with the special rapporteur that for the present the Commission could only refrain from giving an opinion on the question, and it seemed that Mr. Lauterpacht did not wish it to do otherwise.

[3] Article 6 read as follows :

" In the case of bays the coasts of which belong to a single State, the belt of territorial sea shall be measured from a straight line drawn across the opening of the bay. If the opening of the bay is more than ten miles wide, the line shall be drawn at the nearest point to the entrance at which the opening does not exceed ten miles."

[4] See summary record of the 170th meeting, paras. 62—66.

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

44. Mr. KOZHEVNIKOV said that, in order to avoid repeating the arguments he had advanced at the 164th meeting,[6] he would merely state that the Commission could not approve article 6 in its present form, since it did not reflect existing international law; in particular it ignored the International Court of Justice's judgment in the *Fisheries Case;* the Court's judgment was of such a nature that it had to be taken into account.

45. If he had rightly understood Mr. Lauterpacht, he appeared to have reverted to a concept which had already failed to find support in the Commission, namely, that of a three-mile limit for the territorial sea; for the connexion between that limit and a ten-mile limit for bays was undeniable. He did not indeed understand why Mr. Lauterpacht had wished to raise the question of bays at the present time. In his view it was obvious that the special rapporteur would have to study the whole question much more thoroughly, with a view to submitting a realistic recommendation to the Commission at its next session. If article 6 were put to the vote in its present form, he would be unable to support it.

46. Mr. el-KHOURI said that, in view of the action which the Commission had taken with regard to the breadth of the territorial sea, he wished to suggest to the special rapporteur that the only way in which it could be consistent was to adopt, instead of the second sentence of article 6, a general rule worded somewhat as follows:

"If the opening of the bay is more than double the breadth of the territorial sea, the line shall be drawn at the nearest point to the entrance at which the opening does not exceed double the breadth of the territorial sea."

47. Mr. HUDSON said that he had been surprised by the suggestion that a definition of a bay existed in international law. As far as he knew, no such definition existed, and certainly none based on the ratio between the width of an indentation and the extent of its incision inland.

48. He had also been surprised by the assertion that the great majority of States which had sent replies on the question to the Preparatory Committee of the 1930 Codification Conference had been in favour of a ten-mile limit for bays. Of the twenty-two States which had replied, less than half had in fact been in favour of that limit; some had favoured a lower limit, and some a higher limit.

49. It was true that in certain cases, for example in the system established by the North Sea Fisheries Convention of 1882, the ten-mile limit appeared to have given satisfaction. It was interesting to note, however, that that limit had not been rigidly adhered to in the North Atlantic Coast Fisheries Arbitration award, which had been accepted in the main by the United Kingdom Government as well as by the United States Government. It was interesting also that, on the occasion of the recent union of Newfoundland with Canada, the Prime Minister of Canada had made a statement in the Canadian Parliament to the effect that the Canadian Government would approach other States with a view to their acceptance of the Canadian claim that the entire Gulf of the St. Lawrence should be regarded as forming part of the inland waters of Canada, for at both entrances to the Gulf of the St. Lawrence the width across the opening exceeded ten miles.

50. Mr. LAUTERPACHT recalled that he had merely stated that the majority of States which had sent direct replies to the Preparatory Committee of the 1930 Codification Conference had been in favour of a limit not exceeding ten miles.

51. Mr. YEPES said that, even if the close connexion between the maximum breadth of bays, across the opening, and the maximum breadth of the territorial sea had not been clear beforehand, the discussion had brought it out. The ten-mile limit for bays proposed in article 6 appeared to have its origin in the three-mile limit for the territorial sea, and as he had shown that that latter limit had been imposed on the international community by a small minority of States and bore no relation to the existing situation, he could not support article 6 in its present form. Moreover Mr. Hudson had shown that the ten-mile limit for bays did not in fact correspond to existing international law.

52. Mr. ZOUREK said that, as the International Court of Justice had recognized in the *Fisheries Case,* there was no rule of existing international law providing that bays which were more than ten miles wide across the opening should not be regarded as wholly inland waters. The only question which the Commission need consider, therefore, was whether it should attempt to lay down a rule *de lege ferenda.* He did not think there was any need to do so, for the present at least, since all governments would decide the question by reference to what they fixed as the limit of their territorial waters. Moreover, as had been pointed out, no precise definition of bays existed. For those reasons he agreed with the special rapporteur's suggestion in his report that "the Commission should refrain from giving an opinion" on the question, and if article 6 was put to the vote in its present form, he would have to vote against it.

53. Referring to Mr. el-Khouri's suggestion, Mr. FRANÇOIS pointed out that, when the breadth of the territorial sea had been generally limited to three miles, many States had felt unable to accept a six-mile limit for bays. Moreover, if Mr. el-Khouri's suggestion were adopted and three miles subsequently retained as the maximum breadth of the territorial sea, the ten-mile rule for bays, such as it was, would be abolished.

54. Mr. CÓRDOVA said that the principle suggested by Mr. el-Khouri was that which had originally been accepted in principle. In practice, however, it had been found inapplicable, because it meant that a triangular area of high seas was left at the entrance of the bay or river-mouth, and that gave rise to difficulties with regard

[6] See summary record of the 164th meeting, para. 22.

to the exercise of territorial authority. For that reason the great majority of States had ceased to apply the principle and, as had been stated by the Harvard Research, " during the course of the past century it has become fairly well established that a bay, the entrance to which does not exceed 10 miles in width, constitutes a part of the littoral States' territorial waters ".[7] He agreed that the special rapporteur should be requested to study the question further.

55. Mr. el-KHOURI said that the Commission could neither accept article 6 in its present form nor at the present time replace the figure " ten miles " by any other figure. Nor again could it wash its hands of the whole question. The difference of view existed, and it was surely the Commission's duty to attempt to resolve it. With regard to the objection raised by Mr. Córdova, he pointed out that wherever the line was drawn, a small triangular area of sea would fall outside it.

56. Mr. YEPES supported Mr. el-Khouri's suggestion, which should satisfy both those who could accept article 6 in its present form and those who could not. It had the further advantage that, once the maximum breadth of the territorial sea was fixed, the maximum width of bays, across the opening, in order that they should be wholly comprised within inland waters, would automatically be fixed too, without its being necessary for the Commission to revert to that question.

57. In order to afford guidance to the special rapporteur, he thought it would be desirable for the Commission to decide between the principle of the ten-mile rule and the principle contained in Mr. el-Khouri's suggestion, which he personally would support.

58. Mr. KOZHEVNIKOV said that the Commission appeared to be in general agreement that a ten-mile rule for bays could not be accepted. He did not think, however, that agreement had been reached on the principle formulated by Mr. el-Khouri. In the circumstances the only course open to the Commission was to instruct the special rapporteur to give further study to the question, in the light of the views which had been expressed at the present session, with a view to submitting to the next session a proposal which would be acceptable to the majority.

59. Mr. FRANÇOIS said that it was clear that the Commission as a whole was not in favour of the ten-mile rule. He would of course be guided by that fact, but suggested that, leaving that aside, he should be given full latitude in studying the question further.

60. Mr. SPIROPOULOS proposed that the Commission request the special rapporteur to study further the question of bays, in the light of the foregoing discussion, and in particular, of the suggestion put forward by Mr. el-Khouri.

[7] Harvard Law School, *Research in International Law. Nationality. Responsibility of States. Territorial Waters.* Special Supplement to *American Journal of International Law*, vol. 23 (1929), p. 266.

Mr. Spiropoulos' suggestion was unanimously adopted.

ARTICLE 13 (*resumed from above*)

61. The CHAIRMAN indicated that the Commission had completed its consideration of the special rapporteur's report on the régime of the territorial sea. Speaking as a member of the Commission, he recalled that when the Commission had been seeking a formula regarding the delimitation of the territorial sea of two adjacent States, he had suggested that it might adopt a general juridical rule.[8] After further consideration, and particularly in view of the fact that fundamentally different problems appeared to be involved in the case of concave and convex indentations of the coast-line, he now wished to suggest the following text, not as a basis for discussion, but only for the attention of the special rapporteur :

" 1. The delimitation of the territorial sea of two adjacent States should be established in accordance with the following general principles :

" (*a*) Where the configuration of the coast permits it, the boundary is a line drawn perpendicular to the line of general direction of the coast, in the vicinity of the point at which the land frontier between the two States reaches the sea.

" (*b*) Where the configuration of the coast requires another line, the boundary is a line, every point of which is equidistant from the nearest point on the coast-line of each of the two States.

" 2. The boundaries of the territorial sea of two adjacent States shall be demarcated by agreement between them. Failing agreement, the parties are under the obligation to have the boundaries established by arbitration."

Nationality, including statelessness (item 6 of the agenda) (*resumed from the 163rd meeting*)

62. The CHAIRMAN announced that, as the outcome of an informal meeting of the Commission, Mr. Hudson had submitted the following proposal :

" In reliance on article 16 (*e*) and article 21 (*l*) of its Statute, the Commission decides to invite Dr. Ivan Kerno to serve, after his separation from the Secretariat, as an individual expert of the Commission charged with work on the elimination or reduction of statelessness, under the general direction of the Chairman of the Commission.

" It also decides to report the above decision to the Secretary-General."

63. Mr. KOZHEVNIKOV recalled that he had had no opportunity at the informal meeting to state his views on the principle underlying Mr. Hudson's proposal. After full consideration of the relevant provisions in the Statute, he felt obliged to oppose the principle that appointments could be made in the way proposed. The

[8] See summary record of the 171st meeting, para. 18.

Statute offered other means of solving the problem, for example the appointment of an assistant rapporteur from among the members of the Commission, and he believed that that course had been adopted in the past. He proposed therefore that the Commission decide first the question of principle underlying Mr. Hudson's proposal, before going on to decide on its application in the present case.

64. The CHAIRMAN said that, in accordance with the wish expressed by Mr. Kozhevnikov, he would first put to the vote the question of principle, whether or not the Commission could appoint individuals to serve as experts on the Commission, in reliance on articles 16 (*e*) and 21 (*l*) of its Statute.

65. Mr. ZOUREK said that he would vote in the negative on that question of principle, since the whole of article 16 of the Statute was prefaced by the words: " When the General Assembly refers to the Commission a proposal for the progressive development of international law ".

The question of principle was decided in the affirmative by 11 votes to 2.

66. Mr. KOZHEVNIKOV said that, in view of that decision, he wished to propose that, in the particular case under consideration, the Commission should appoint one of its members to act as assistant rapporteur.

Mr. Kozhevnikov's proposal was rejected by 11 votes to 2.

67. The CHAIRMAN then put to the vote the proposal submitted by Mr. Hudson.

Mr. Hudson's proposal was adopted by 11 votes to none, with 2 abstentions.

Programme of work (*resumed from the 170th meeting*)

68. The CHAIRMAN said that the Commission had next to consider the draft on arbitral procedure prepared by the Standing Drafting Committee, and the explanations prepared by the special rapporteur. It was his intention to take the articles one by one, first ascertaining whether there were any comments on the wording submitted by the Standing Drafting Committee, and then inviting observations on the explanation concerning the article.

69. Mr. KOZHEVNIKOV said that, in his view, a vote should be taken on each article, and a final vote on the draft as a whole.

70. Mr. SCELLE pointed out that the articles had already been discussed at length. Their substance had been approved by the Commission and had not been altered by the Standing Drafting Committee. In a few cases, which he had indicated in his explanations, there had been some doubt as to what the Commission's decision had been, and the Commission would therefore have to decide whether in such cases the text which the Standing Drafting Committee had submitted accorded with the Commission's intentions. He presumed, however, that there was no question of reopening discussion of all the articles. It would, of course, be open to any member of the Commission to vote against the draft as a whole.

71. Mr. KOZHEVNIKOV agreed that there was no need to repeat the earlier discussions. Drafting questions could, however, conceal questions of substance, and the Commission was bound therefore to consider the whole draft carefully, article by article, in order to ascertain whether any such questions of substance arose.

72. Mr. SPIROPOULOS felt that there was no real difference of view between Mr. Kozhevnikov and Mr. Scelle. Clearly the Commission could not decide in advance whether articles submitted by the Standing Drafting Committee would give rise to questions of substance.

73. Mr. LAUTERPACHT, on a point of order, expressed the hope that it would be possible for the Commission to devote two or three meetings, preferably in private session, to consideration of the Commission's work programme and methods of work during the forthcoming year.

74. The CHAIRMAN pointed out that the remaining time at the Commission's disposal would probably be fully taken up with consideration of the draft on arbitral procedure, examination of the comments received from governments on the draft articles on the continental shelf and related subjects and discussion of further steps to be taken in connexion with the work on the régime of the high seas and approval of the Commission's report to the General Assembly.

75. Mr. SCELLE pointed out that the draft on arbitral procedure would form part of the Commission's report to the General Assembly. He presumed that when the Commission came to approve that report, it would not have to examine the draft on arbitral procedure a second time.

76. The CHAIRMAN confirmed that Mr. Scelle's presumption was correct.

The meeting rose at 1.10 p.m.

173rd MEETING

Monday, 28 July 1952, at 2.45 p.m.

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* The number within brackets indicates the article number in the Special Rapporteur's Report (A/CN.4/46).