

Document:-  
**A/CN.4/SR.257**

**Summary record of the 257th meeting**

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

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“3. In exceptional cases in which equitable considerations permit the drawing of base lines of a length and at distances exceeding those laid down in paragraph 2, the coastal State shall be entitled to draw such lines provided that, at the request of any interested State, the International Court of Justice shall have the power, in conformity with paragraph 2 of article 38 of its statute, to maintain, modify or annul the lines thus drawn.

“4. Due publicity shall be given by the coastal State to straight base lines drawn in conformity with the preceding paragraphs.”

28. The redraft did not depart materially from the Special Rapporteur's proposals. It was largely a rewording of the latter's draft article 6 with a number of changes of form. Some of the changes, however, affected substance. Firstly, at the end of paragraph 1, the following words were new: “In the sea areas thus enclosed the right of passage for foreign ships shall be the same as in territorial waters.” As certain areas of the high seas were going to be incorporated in the territorial sea, it was proper that the right of passage should be safeguarded. Such a course would be in conformity with the International Court's judgement in the Fisheries case; that case had merely been concerned with fishing rights, the right of passage not being involved.

29. In paragraph 3 he had tried to meet the wishes of those members of the Commission who regarded the ten-mile maximum permissible length as too rigid. Paragraph 3 would enable States to exceed that limit in exceptional cases, subject to a power of review vested in the International Court. It was clear that some authority had to determine the limit to which a State would be allowed to go. The Commission might argue that it could not itself lay down rules; but it could provide the International Court with a legal basis for acting as final arbiter.

30. It might well be that for geographical, economic or historical reasons, the ten-mile maximum would prove far too short in a particular case; such exceptional cases should be recognized and the Commission should admit that in such cases the State concerned was entitled to draw a straight base line longer than the ten-mile maximum. But clearly if another State objected, the only solution was to let the International Court decide the matter *ex aequo et bono* in conformity with article 38, paragraph 2, of its statute. It was clearly impossible to lay down any legal rules about such equitable considerations as economic, geographical or historical grounds. For that reason, there seemed to be no option but to admit, in that case, the right of the Court to decide *ex aequo et bono*, although, in general, there were serious objections to conferring general powers of that nature upon the Court.

31. Mr. SPIROPOULOS said there were some important differences between Mr. Lauterpacht's amendment and the draft originally proposed by the Special Rapporteur.

32. In the first place, it seemed to him that the right of passage through internal waters should not be referred to in article 6. It should be discussed at a later stage, when the whole issue of the right of passage was considered by the Commission.

33. With regard to the length of the straight base lines, he still thought that no maximum should be specified; any indication given should be merely tentative.

34. He was in disagreement with paragraph 3 of Mr. Lauterpacht's draft, for surely the Court had no authority to modify or annul straight base lines drawn by States or, indeed, even to maintain them. What the Court could do was merely to state whether a base line drawn by a State was or was not consistent with international law. Paragraph 3 should be worded so as to provide that States could apply to the International Court for a decision as to whether a base line had been drawn in conformity with paragraphs 1 and 2 of article 6 or not.

35. Mr. SCELLE agreed with Mr. Lauterpacht. It was perfectly lawful to provide in a convention that the International Court could decide on an issue *ex aequo et bono* by simply referring to article 39, paragraph 2, of the Court's statute.

36. It should be clearly understood that there were no existing rules of international law on the subject of the maximum permissible length of straight base lines. Rules of international law would in time be evolved by judicial decisions; when a sufficient number of concurring court decisions had been given on a certain point, a new rule of unwritten international law would be established. If the International Court was to fulfil its essential role in the formation of case-law, it had to have the power to rule *ex aequo et bono*, and hence the freedom to evolve new law on the particular subject. For those reasons, he considered paragraph 3 of Mr. Lauterpacht's draft as an extremely valuable provision.

The meeting rose at 6 p.m.

## 257th MEETING

Tuesday, 29 June 1954, at 9.45 a.m.

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Chairman: Mr. A. E. F. SANDSTRÖM

Rapporteur: Mr. J. P. A. FRANÇOIS

*Present :*

*Members:* Mr. G. AMADO, Mr. R. CORDOVA, Faris Bey el-KHOURI, Mr. F. GARCÍA-AMADOR, Mr. S. HSU, Mr. H. LAUTERPACHT, Mr. R. PAL, Mr. C. SALAMANCA, Mr. G. SCELLE, Mr. J. SPIROPOULOS, 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 2 of the agenda)**  
(A/CN.4/53, A/CN.4/61 and Add. 1, A/CN.4/71 and Add. 1 and 2, A/CN.4/77)<sup>1</sup> (continued)

CHAPTER II: LIMITS OF THE TERRITORIAL SEA  
(continued)

*Article 6: Straight base line (A/CN.4/77)*<sup>2</sup> (continued)

1. Mr. LAUTERPACHT said he had decided to withdraw, provisionally, the last sentence of paragraph 1 of the draft article 6 he had submitted to the Commission.<sup>3</sup> He agreed that the question of the right of passage in internal waters should be dealt with in another part of the convention.

2. He added that his draft for paragraph 1 did not materially depart from the corresponding clause drafted by the Special Rapporteur. Accordingly, he was not formally proposing an amendment to the Special Rapporteur's draft.

3. Mr. ZOUREK said he could see no reason for the rule proposed in article 6, paragraph 2. As a general rule coasts were irregular, straight coastlines being the exception; consequently, the straight base line method should be the rule and the low-water line rule the exception. By authorizing States to adopt the system of straight base lines only where the coast was exceptionally indented and not in cases of lesser sinuosities, the Commission would even be departing from the International Court's judgement in the Fisheries case<sup>4</sup> which admitted the straight base line rule even in the case of minor irregularities of the coast. The rule of a maximum permissible length of ten miles for the straight base lines was not part of existing international law. It had been suggested that it might be adopted as *lex ferenda*. In order to assess the chances of such a rule being adopted, however, the law as it stood had to be taken into consideration. The Court's decision showed that States could freely choose whichever system of delimitation suited them best. In practice, certain States drew straight base lines twenty, thirty and even forty miles long; it would not be realistic to suppose that they would discontinue their practice.

<sup>1</sup> *Vide supra*, 252nd meeting, para. 54 and footnotes.

<sup>2</sup> For the English text of the article, *vide supra*, 254th meeting, footnote 7.

<sup>3</sup> *Vide supra*, 256th meeting, para. 27.

<sup>4</sup> *I.C.J. Reports 1951*, p. 116.

4. The system of drawing straight base lines in no way impaired the freedom of the seas in practice; for while the outer limit of territorial waters was thereby pushed a little further to seaward the areas which would thereby cease to form part of the high seas were as a rule not crossed by the great ocean routes.

5. Some members of the Commission had relied, in support of their views, on the opinion of the committee of experts. That committee was an unofficial body set up unilaterally, not one of the experts being from a socialist country. It had really been a group of private persons whose decisions in no way bound the Commission. He added that if the Chairman was prepared to delete the word "deeply" from his amendment<sup>5</sup> he (Mr. Zourek) might be prepared to accept paragraphs 1 and 2 of the Chairman's draft.

6. The Chairman said he preferred to maintain the term "deeply" which appeared in the International Court's decision and which enabled the provisions of the relevant paragraph to be extended to bays.

7. Mr. HSU pointed out that most of the members of the committee of experts came from countries which applied the three-mile limit, a circumstance which had surely influenced their advice. The rules which the experts had formulated and which the Special Rapporteur had endorsed were of interest only for those countries, which after all constituted a small minority.

8. The principal object of the straight base lines method, as of the theory of the contiguous zone and of the continental shelf, was to meet objections to the three-mile limit on the part of certain countries, particularly in northern Europe. He thought that either paragraph 2 should be dropped from article 6 or else its provisions should be restricted expressly to those countries which observed the three-mile rule in respect of their territorial sea.

9. Mr. FRANÇOIS, Special Rapporteur, replying to Mr. Zourek, said that his draft was not intended to prevent States from applying the straight base line method if justified, but only to avoid abuses. Countries which at the moment drew straight base lines of more than ten miles in length were in any case not numerous; in practice, only a few Scandinavian countries were involved.

10. In reply to Mr. Hsu, he repeated that there was no relation between the straight base lines method and the question of the breadth of the territorial sea.

11. With regard to the amendment proposed by Mr. Lauterpacht<sup>6</sup> he would point out that the words in paragraph 2 thereof "and provided further that such headlands and/or islands are not more than ten miles apart" were redundant in view of the first sentence in the same paragraph. In that connexion, he proposed that paragraph 2 of his own article 6, the text of which was obscure, should be replaced by one

<sup>5</sup> *Vide supra*, 256th meeting, para. 24.

<sup>6</sup> *Vide supra*, 256th meeting, para. 27.

of the following alternative drafts A and B. He personally preferred alternative A.

*Alternative A:* "As a general rule the maximum permissible length for a straight base line shall be ten miles. Such base lines may be drawn, when justified, between headlands of the coastline or between any such headland and an island less than five miles from the coast, or between such islands. In exceptional cases the drawing of a longer line may be permitted; in that case, however, no point on such lines should be farther than five miles from the coast. Base lines shall not be drawn to and from drying rocks and shoals. Such lines shall be deemed to separate inland waters from the territorial sea."

*Alternative B:* "The maximum permissible length for a straight base line shall be ten miles. Such base lines may be drawn, when justified, between headlands of the coastline or between any such headland and an island, or between islands, provided that no point on such lines is farther than five miles from the coast. Base lines shall not be drawn to and from drying rocks and shoals. Such lines shall be deemed to separate inland waters from the territorial sea."

12. Mr. CORDOVA said that under the Special Rapporteur's article 6 States would have greater latitude in the case of small indentations in the coast than in the case of large bays. Article 8,<sup>7</sup> which related to bays, did not allow for any exception to the ten-mile rule.

13. Mr. FRANÇOIS, Special Rapporteur, said that the answer to that question depended on the definition of the term "bay".

14. The CHAIRMAN said the Commission would consider that question in connexion with article 8. The five-mile rule for the maximum distance from the coast would be difficult to apply in the case of archipelagoes such as the *Skjaergaard* off the coast of Norway, unless straight base lines were drawn around the whole archipelago. In support of his view, he read a passage from the judgement of the International Court of Justice in the Fisheries case;<sup>8</sup> the Court had further stated that the straight base lines rule was not a precise mathematical rule.<sup>9</sup> Hence the rule should remain flexible to some extent; for that purpose, the general rule should perhaps be laid down first and the exceptions stated afterwards, as the Special Rapporteur had done in his draft.

15. Mr. LAUTERPACHT thought it important to retain the rule which laid down that the straight base line should at no point be more than five miles distant from the coast. A base line might very well be drawn through a number of islands less than ten miles apart and would thus attain a considerable length. If there

were no limit to its distance from the coast, vast stretches of the high seas might be enclosed. He pointed out that the stipulation of a maximum distance of five miles in no way meant that the remoter islands would not have their own territorial sea.

16. In reply to Mr. Zourek he said that coastal waters were frequently used for purposes of navigation both in time of peace and in time of war. He recalled the controversy which had arisen in that connexion in the case of the *Altmark* in 1940 during the second world war. For that reason the problem created by straight base lines transcended the question of safeguarding the economic interests of the coastal State. Moreover, from the latter's point of view it was as well to bear in mind that, while the method of straight base lines extended the rights of coastal States, it also greatly increased their duties, especially if they were neutrals.

17. Referring to the Chairman's draft<sup>10</sup> he doubted whether the words "for the purpose of simplifying to a reasonable degree the perimeter of the territorial sea" were appropriate. Obviously, straight base lines simplified the situation. But simplification was a somewhat dangerous formula if it resulted in subjecting large areas of the high seas to the sovereignty of the coastal State.

18. The clause relating to "historical grounds" in the same draft was, however, acceptable in the sense that it referred to prescriptive rights. The same applied to other draft provisions. A better formula would be: "historical or prescriptive rights".

19. The CHAIRMAN said he had proposed the words "simplifying to a reasonable degree" because an excessively irregular outer limit for the territorial sea was undesirable. That had been one of the arguments of the Court in favour of straight base lines.

20. Mr. FRANÇOIS, Special Rapporteur, thought Mr. Lauterpacht's draft identical in substance with his own, with the exception of the last phrase of his own draft relating to internal waters. The Commission might defer consideration of that clause.

21. He preferred his own draft as it conformed exactly to the Court's decision; there was every advantage for the Commission to have the backing of the Court's authority.

22. With regard to the Chairman's draft, he wondered if the clause relating to historical grounds was not already contained by implication in the phrase "where circumstances necessitate" of his own text.

23. The CHAIRMAN thought these words were not sufficiently precise.

24. Mr. LAUTERPACHT pointed out that in their context they could not refer to historical grounds.

25. Mr. PAL wondered if the Commission was right, for the purpose of article 6, in treating in the same

<sup>7</sup> In A/CN.4/77.

<sup>8</sup> *I.C.J. Reports 1951*, p. 131.

<sup>9</sup> *Ibid.*, p. 142.

<sup>10</sup> *Vide supra*, 256th meeting, para. 24.

way the outline of the coast itself and islands. The position of such islands in relation to the coast was important for article 6. Islands within the territorial sea and those lying outside it should not be subject to the same régime. Only those islands situated within the territorial sea of a State and recognized as forming an integral part of its territory should be taken as individual points of departure for measuring the breadth of the territorial sea. Other islands would no doubt have their own territorial sea, but it would be difficult to consider them as individual points of departure for the base line provided for in the article under consideration. Such islands could be subject to the sovereignty of the coastal State and could possess their own territorial sea and safety zone. In order to be considered as points of departure for the base line, they must be recognized as an integral part of the territory of the State.

26. The CHAIRMAN pointed out that the outer limit of the territorial sea would vary according to the method adopted for drawing the base line.

27. Mr. CORDOVA said that Mr. Lauterpacht, supported by the Special Rapporteur, apparently envisaged the formation of two distinct zones between the straight base line and the coast, the one differing from the other only in respect of the right of passage. He inquired where the outer limit of the first zone would be.

28. Mr. LAUTERPACHT replied that it would be the line of low-water mark.

29. Mr. CORDOVA thought that there should be only one line to separate internal waters from the territorial sea. He agreed with Mr. Pal so far as the question of islands was concerned.

30. Mr. SPIROPOULUS thought that the Commission should not at that point consider the question of the right of passage; it should merely discuss paragraph 1, for which he preferred the Special Rapporteur's draft.

31. Mr. ZOUREK pointed out in reply to Mr. François that, without consulting all Governments, the Commission could not possibly discover exactly how many States drew lines more than ten miles in length. For example, the People's Republic of Bulgaria had adopted the straight base lines system between the promontories of Stalin (formerly Varna) Bay and between the promontories of Burgas Bay, the area lying between those lines and the coast being treated as internal waters.

32. Mr. PAL thought that, for the purpose of drawing the base lines, the only islands to be taken into consideration were those situated within the existing limits of the territorial sea and those which were internationally recognized as forming an integral part of the territory of the coastal State.

33. Mr. AMADO recalled that under article 11,<sup>11</sup> every island had its own territorial sea. That question did not affect article 6.

34. Mr. SPIROPOULOS agreed with Mr. Amado.

35. Mr. CORDOVA thought that in selecting the method of drawing the base lines the committee of experts had only had in mind countries applying the three-mile rule.

36. The CHAIRMAN said the Commission should vote on paragraph 1 of article 6 of the Special Rapporteur's draft.

37. Mr. LAUTERPACHT pointed out that the Chairman's amendment, by referring only to very indented coastlines, was not likely to give rise to any abuses. Nevertheless, he preferred the Special Rapporteur's text.

38. The CHAIRMAN agreed with Mr. Lauterpacht's view and withdrew his amendment.

39. He put to the vote Mr. Zourek's amendment to paragraph 1.<sup>12</sup>

*The amendment was rejected by 8 votes to 1, with 4 abstentions.*

40. Mr. SCALLE proposed the deletion of the words "As an exception" at the beginning of paragraph 1.

41. Mr. AMADO thought those words important. Article 5 laid down a general rule for the drawing of the base line; article 6 provided for exceptions to that rule, and in law, every exception had to be spelled out in full. The International Court had acknowledged in its decision in the Fisheries case that States had as a general rule adopted the line of low water mark for calculating the breadth of the territorial sea.

42. Mr. LAUTERPACHT suggested that the question of the exact terms to be employed might be referred to the Drafting Committee. In his opinion the rest of the text showed sufficiently clearly the exceptional nature of the straight base line, and the words "As an exception" at the beginning of the paragraph were, therefore, unnecessary.

43. Mr. FRANÇOIS, Special Rapporteur, said he would prefer the words in question to stand.

44. Mr. SCALLE thought that by presenting the rule of the straight base line as an exception, the Commission was departing from the spirit of the International Court's decision and was adopting a stricter attitude than the Court.

45. The CHAIRMAN put to the vote Mr. Scelle's proposal that the words "As an exception" at the beginning of paragraph 1 should be omitted.

*The proposal was not adopted, 5 votes being cast in favour, 5 against, with 3 abstentions.*

<sup>11</sup> In A/CN.4/77.

<sup>12</sup> *Vide supra*, 255th meeting, para. 23.

46. Mr. LAUTERPACHT proposed the deletion of the last phrase of the Special Rapporteur's paragraph 1 ("to be subject to the regime of internal waters"). The Commission should not prejudge the régime of the belt of sea between the limit of internal waters and the territorial sea.
47. Mr. CORDOVA pointed out that if it was not expressly stated at the outset that the new belt of sea would be subject to the same régime as the territorial sea, yet another zone might be formed which would only complicate the problem still further.
48. The CHAIRMAN recalled that in its decision in the Fisheries case, the International Court had made no special provision for the stretches of water lying to landward of the straight base line. The Commission might consider what law should be applicable thereto after it had fixed their limits.
49. Mr. ZOUREK stressed that the base line should be a dividing line between the waters; internal waters had their own régime and the meaning of the term was generally recognized beyond any doubt, the waters contained between the base lines and the coast were internal waters.
50. Mr. AMADO referred to the traditional distinction between inland waters, territorial sea and territory; there was no need to add a further category. In article 8,<sup>13</sup> all the expanse of water lying to landward of the base line was treated as inland waters.
51. Mr. LAUTERPACHT said the problem was bound to crop up what régime was to be applicable to the expanse of water between the line of low-water mark and the straight base line; that expanse of water could become important in the case of the base line being drawn through islands. In any case, the Commission should decide what régime should be applied, and particularly to what extent the right of passage was to be recognized in those waters.
52. Mr. CORDOVA remarked that Mr. Lauterpacht's proposal might increase the breadth of the territorial sea. As the Special Rapporteur's draft provided for the drawing of straight base lines up to a distance of five miles from the coast, it would be impossible, in certain cases, to observe the three-mile limit for the breadth. Accordingly he could only vote in favour of article 6 if the last sentence was retained.
53. Mr. SCELLE said the Commission should not confuse two distinct problems; that of the base line and that of the right of passage in internal waters. The right of passage was absolutely necessary because no navigation was possible, even on the high seas, without ports of call; that was the meaning of the well-known principle of the unity of the sea. It would, however, be easier if the Commission discussed Mr. Lauterpacht's proposal in connexion with the question of the right of passage as a whole.
54. The CHAIRMAN agreed with Mr. Scelle, and again referred to the extracts from the International Court's judgement which he had quoted earlier.<sup>14</sup>
55. Mr. FRANÇOIS, Special Rapporteur, said that perhaps the question of the right of passage was not as important as some members of the Commission seemed to think. Mr. Lauterpacht probably did not intend to treat as inland waters the new zone which might be called *eaux intermédiaires*; he wondered, however, under what conditions the right of passage would be acknowledged therein. The matter could perhaps be held over until the Commission considered the rights of States. He wished to stress, however, that the new zones in question would probably not be as extensive as Mr. Lauterpacht thought; the straight base lines could not be at a greater distance than five miles from the coast and in any case would not be permitted except in the case of a particularly indented coast.
56. Mr. LAUTERPACHT agreed to the suggestion made by the Special Rapporteur and Mr. Scelle that the Commission should discuss the point he had raised when it came to deal with right of passage. Accordingly, he withdrew his draft amendment. He would, however, point out that the Special Rapporteur's remarks on the five-mile maximum distance prejudiced the Commission's future decision concerning paragraph 2.
57. The Chairman said that, before voting on paragraph 1 as a whole, the Commission should further decide if it was going to mention "historical rights".
58. Mr. LAUTERPACHT said that a drafting question of that nature could be left to the Drafting Committee.
59. Mr. HSU on the contrary regarded the question as one of substance. The term "historical rights" was vague; it might enable States to avail themselves of situations which they had themselves created in violation of international law. He would prefer a simple reference to "historical grounds".
60. Mr. AMADO and Mr. CORDOVA pointed out that the term "historical rights" had a very definite meaning; it referred to immemorial rights.
61. The CHAIRMAN said that the term "historical grounds" which had been employed by the International Court of Justice in its decision in the Fisheries case, would be quite appropriate in the particular context.
62. Mr. LAUTERPACHT suggested that the first sentence of paragraph 1 should read: "... where historical reasons or where circumstances..." In the same paragraph the words "In these special cases" would replace the singular "In this special case".
63. The CHAIRMAN put to the vote article 6, paragraph 1, in that amended form.

*Article 6, paragraph 1, as amended, was adopted by 8 votes to 1, with 4 abstentions.*

<sup>13</sup> In A/CN.4/77.

<sup>14</sup> *Vide supra*, para. 14.

64. Mr. ZOUREK explained that he had voted against paragraph 1 because it was inconsistent with existing international law in that it treated the straight base lines system as an exceptional case; also, it tended to restrict the right of States to choose whichever system was most suitable to their particular needs.

65. Mr. SCELLE said he had abstained because the draft adopted by the Commission treated straight base lines as the exception.

66. Faris Bey KHOURI said he had abstained from voting because he wanted to wait until the draft had been considered by the Drafting Committee. The final phrase referred to the regime of the sea areas lying within the base lines, which was not the subject matter of the paragraph in question. Besides, the reasons or circumstances which might justify the straight base lines method had not been explained in sufficient detail.

67. The CHAIRMAN said that the Drafting Committee was, of course, free, within the limits of its competence, to alter the wording of the paragraph just adopted.

68. Mr. FRANÇOIS, Special Rapporteur, recalled that, earlier in the meeting, he had proposed two new alternatives for paragraph 2 and had expressed a preference for alternative A.<sup>15</sup>

69. Replying to a question by Mr. Córdova, he explained that the alternative drafts differed only in respect of the maximum ten-mile length for the straight base lines. Under alternative A that length could, in exceptional cases, be extended, on condition that no point of the base lines was more than five miles from the coast; lines of less than ten miles in length could even, at certain points, be more than five miles distant from the coast.<sup>16</sup> Alternative B contained a more rigid rule which prohibited the drawing of a line exceeding ten miles in length or which at any one point was more than five miles from the coast.

70. Alternative A would be more convenient in the case of certain deeply indented coastlines. He added that it was based directly on the conclusions reached by the committee of experts at The Hague (A/CN.4/61/Add.1, annex, page 4, paragraph 2, and page 5, paragraph 3).

71. Mr. LAUTERPACHT pointed out that the words "such islands" in alternative A showed clearly that lines exceeding ten miles in length could not be measured as from islands lying at a distance of more than five miles from the coast.

72. He also thought that the words "when justified" in alternative A should be replaced by some such words as "in the cases referred to in paragraph 1".

73. Finally, he pointed out that, by contrast with the

formula in paragraph 1, the "exceptional cases" referred to in alternative A were not specified.

74. Mr. FRANÇOIS, Special Rapporteur, said, in reply to Mr. Lauterpacht's last remark, that the committee of experts had not been more specific in their own conclusions; they had given no indication with regard to cases where the extension of the line was authorized, or with regard to the length to which such a line might be extended.

75. Mr. LAUTERPACHT said that in a legal instrument such vagueness was inadmissible. Exceptional circumstances justifying departures from the rule might be historical, geographical or of any other kind. He wondered how a judicial authority could apply a rule drafted in such terms.

76. Mr. CORDOVA shared Mr. Lauterpacht's misgivings.

77. Mr. SPIROPOULOS proposed that the words "In exceptional cases" should be deleted, and that the Commission should simply recognize the right to draw base lines exceeding ten miles in length. States would always make it known if they considered theirs to be an exceptional case.

78. Mr. ZOUREK pointed out that there was a contradiction between article 6, paragraph 2, and article 13.<sup>17</sup> Article 13 provided that drying rocks and shoals might be taken as points of departure for measuring the territorial sea, without specifying whether those rocks had to be within a certain distance from the coast. They had, of course, to be situated wholly or partly within territorial waters. In his opinion, the two distances of five and ten miles mentioned in article 6, paragraph 2, were arbitrary and could be variously interpreted. He recalled that in his proposed amendment<sup>18</sup> to article 6 he had suggested that the paragraph in question should be deleted.

79. Mr. CORDOVA said that Mr. Spiropoulos' suggestion was not acceptable; the opening sentence of paragraph 2 laid down a general rule; it was therefore necessary to state that departures from that general rule would only be allowed in exceptional cases.

80. Mr. SPIROPOULOS, replying to Mr. Córdova, said that if the first rule were to be considered as a general one and the second as a special one, his own suggestion implied no contradiction.

81. In reply to Mr. Zourek, he said that for the time being the Commission was not discussing article 13. The distances of five and ten miles were provisional, as he had mentioned before; their main purpose was to give Governments the opportunity of stating their point of view.

82. Mr. LAUTERPACHT agreed with Mr. Córdova that if the words "In exceptional cases" were dropped

<sup>15</sup> *Vide supra*, para. 11.

<sup>16</sup> *Vide supra*, 255th meeting, para. 6.

<sup>17</sup> In A/CN.4/77.

<sup>18</sup> *Vide supra*, 255th meeting, para. 23.

from alternative A, then the words "As a general rule" should not be used either. Paragraph 2 would then be more affirmative. In his opinion, provision had to be made for exceptional cases and accordingly he suggested that the words "In exceptional cases" should be retained, subject to the addition, as in the case of paragraph 3 of his own draft article 6,<sup>19</sup> of the words "or where equitable considerations permit..." That was a vague, but nonetheless legal' formula.

83. The CHAIRMAN said he would find it difficult to accept a rule as rigid as that drafted by the Special Rapporteur; he therefore proposed that in the last sentence of alternative A the words "in that case, however, no point on such lines should be farther than five miles from the coast", should be replaced by the words "and the distance of five miles may also be exceeded". As he had explained by reference to archipelagoes, in some cases the base line could not invariably remain within five miles from the coast.

84. Mr. SCELLE suggested that, as a precaution against abuses, the Chairman's proposal should read: "... may also be slightly exceeded."

The meeting rose at 1 p.m.

<sup>19</sup> *Vide supra*, 256th meeting, para. 27.

## 258th MEETING

Wednesday, 30 June 1954, at 9.45 a.m.

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*Chairman*: Mr. A. E. F. SANDSTRÖM

*Rapporteur*: Mr. J. P. A. FRANÇOIS

#### *Present*:

*Members*: Mr. G. AMADO, Mr. R. CÓRDOVA, Faris Bey el-KHOURI, Mr. F. GARCÍA-AMADOR, Mr. S. HSU, Mr. H. LAUTERPACHT, Mr. R. PAL, Mr. C. SALAMANCA, Mr. G. SCELLE, Mr. J. SPIROPOULOS, 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 2 of the agenda) (A/CN.4/53, A/CN.4/61 and Add. 1, A/CN.4/71 and Add. 1 and 2, A/CN.4/77)<sup>1</sup> (*continued*)

### CHAPTER II: LIMITS OF THE TERRITORIAL SEA (*continued*)

#### *Article 6: Straight base line*<sup>2</sup> (*continued*)

1. The CHAIRMAN invited the Commission to resume debate on the Special Rapporteur's alternative A for paragraph 2.<sup>3</sup>

2. Mr. ZOUREK, comparing the Special Rapporteur's first alternative, alternative A, with the relevant paragraph in the committee of experts' report,<sup>4</sup> said that the alternative contained two arbitrary data, the five-mile and the ten-mile distances. The Special Rapporteur's draft provision was much harder on coastal States than the experts' opinion, for the latter had stipulated a maximum five-mile distance from the coast only with respect to the first island and not with the others, in cases where more than one island was concerned.

3. With reference to Mr. Spiropoulos' contention<sup>5</sup> that the only object of stipulating the maximum breadth of ten miles was to elicit comments from Governments, he expressed surprise that the article in question should expressly provide for a ten-mile distance. He opposed any mention of a particular figure, but if it was desired to mention one at all for the object Mr. Spiropoulos had indicated, a twenty-five mile distance would be just as suitable and perhaps even more likely to provoke a reaction on the part of governments.

4. He pointed out that a number of the provisions contained in draft article 6 would, if adopted, prejudice the discussion of other articles which the Commission had not yet considered. A decision on a maximum ten-mile length and on a five-mile maximum distance from the coast would prejudice the question of bays in article 8; by adopting those provisions the Commission would be prejudging the definition of "groups of islands" to be given in article 12 and the delimitation of the territorial sea at estuaries as proposed in article 15.<sup>5</sup> The Commission could not adopt the five- and ten-mile maximum distances which had been proposed. Accordingly, he proposed that paragraph 2 of article 6, which was not indispensable for either the article or the draft regulation as a whole, should be deleted.

6. Mr. FRANÇOIS, Special Rapporteur, pointed out with regard to the first point raised by Mr. Zourek that he had probably only read the French text of the

<sup>1</sup> *Vide supra*, 252nd meeting, para. 54 and footnotes.

<sup>2</sup> *Vide supra*, 254th meeting, footnote 7.

<sup>3</sup> *Vide supra*, 257th meeting, para. 11.

<sup>4</sup> Annex to document A/C.N.4/61 in *Yearbook of the International Law Commission, 1953*, vol. II.

<sup>5</sup> *Vide supra*, 256th meeting, paras. 8-9 and 257th meeting, para. 81.