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**Summary record of the 313th meeting**

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

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responsibility for the protection of those countries' interests. He would appeal particularly for support from the United States which was usually so liberal but which now appeared to have taken a rigid stand on the three-mile rule.

65. Mr. LIANG (Secretary to the Commission) said that without expressing any views on the relative merits of the Special Rapporteur's and Mr. Amado's texts, he wished to point out that the Special Rapporteur had raised an extremely important question, namely, the distinction between the rights which might be asserted by the coastal State and the obligation on others to recognize them. He was not sure whether there could be such a hiatus in the correlation between rights and duties.

66. Mr. KRYLOV said that Mr. Amado's excellent statement would enable him to be brief. In his opinion the Special Rapporteur's text and that of Mr. Amado were virtually irreconcilable, since the first took as its starting-point a three-mile rule from which all other rights and obligations flowed, whereas the latter recognized the possibility of other limits. In view of the limited number of States which in fact adhered to the three-mile rule, he was unable to see how the Special Rapporteur could defend his proposition. The Commission would do well to examine existing practice rather than delve back into history, and he therefore urged it to adopt a more practical standpoint.

67. Referring to the point raised by Faris Bey el-Khouri, he said that the Commission would be transgressing the terms of its Statute if it sought to grant legislative power to the International Court of Justice.

*Further discussion of article 3 was adjourned.*

The meeting rose at 1.5 p.m.

### 313th MEETING

*Thursday, 16 June 1955, at 10 a.m.*

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*Chairman* : Mr. Jean SPIROPOULOS

*Rapporteur* : Mr. J. P. A. FRANÇOIS

*Present* :

*Members* : Mr. Gilberto AMADO, Mr. Douglas L. EDMONDS, Sir Gerald FITZMAURICE, Mr. F. V. GARCÍA

AMADOR, Mr. Shuhsi Hsu, Faris Bey el-KHOURI, Mr. S. B. KRYLOV, Mr. Carlos SALAMANCA, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCELLE, Mr. Jaroslav ZOUREK.

*Secretariat* : Mr. LIANG, Director of Codification Division, Office of Legal Affairs, Secretary to the Commission.

#### Régime of the territorial sea (item 3 of the agenda) (A/2693, A/CN.4/90 and Add.1 to 5, A/CN.4/93, A/CN.4/L.54) (continued)

##### PROVISIONAL ARTICLES (A/2693, CHAPTER IV) (continued)

##### Article 3 [3]: Breadth of the territorial sea (continued)

1-2. Mr. EDMONDS said that the Commission should always bear in mind that its task was to codify and formulate principles of international law. As he saw it, the three-mile limit had been the rule for many years and had been applied by maritime States owning 90 per cent of the world's shipping. In the circumstances the three-mile rule had all the weight of authority behind it and any other limit was a deviation. The American Institute of International Law, in formulating United States law, had consistently upheld the three-mile limit while admitting that certain countries had departed from the established rule. It was also an old rule of international law that the high seas were *res communis* for use by all without restriction or restraint. The régime of the territorial sea was an encroachment upon that freedom and should be strictly circumscribed by the rules which had been applied for many years.

3. No municipal court was guided in rendering judgment by motives of generosity and he had, therefore, been surprised by Mr. Hsu's appeal at the previous meeting that the Commission adopt a generous attitude in giving away what was the property of all nations and by his references to the attitude of former colonial powers. Political considerations should not be allowed to enter into the Commission's discussions, and its members did not sit as representatives of their governments. The attribution of political motives was, therefore, out of place. All that he had sought to do, bearing in mind the Commission's function, was to expound what he believed to be the principles of law.

4. Mr. HSU explained that his remarks had not been directed against the United States of America, which had been the most liberal of the colonial powers in the Far East. He had merely sought to show that the relics of colonialism militated against change in international law.

5. If, as Mr. Edmonds seemed to think, the Commission's sole function was to restate the law, then it should not go outside existing rules. Indeed such work could have been accomplished by any academic institution, whereas the Commission had been set up in order to fulfil the more important task of making good omissions and developing existing law.

6. Mr. EDMONDS pointed out that he had described the Commission's task as one of codification and formulation of international law.

7. Sir Gerald FITZMAURICE said that he had assumed Mr. Hsu's remarks at the previous meeting to be of a general and abstract character. He could assure him that the United Kingdom—and the same was probably true of any other power which had held any position in the Far East—had never contemplated relinquishing its responsibilities and leaving the countries concerned to suffer the consequences of its departure without assistance.

8. Turning to the question of historic rights, which had an important bearing on the Special Rapporteur's proposal,<sup>1</sup> he said that in the course of a private conversation, he had ascertained that there was no substantial difference of view between himself and the Secretary, who had made some comments on the subject at the previous meeting. The issue in the Anglo-Norwegian Fisheries Case<sup>2</sup> had not hinged upon the question of historic waters but on whether Norway possessed an historic right to apply a certain system of delimitation. The International Court had found that the system was not contrary to international law and after considering the historical aspects of the question had established that Norway could, on historical grounds, apply a system somewhat different from the usual one, not because it had been applied for a long time, but because it had raised no objections on the part of other States and had thus received tacit acquiescence. Much had therefore turned on the question of knowledge and the United Kingdom's affirmation that it had had no knowledge of the system and therefore could not be held to have acquiesced in it had been rejected. The Court had adopted an extremely liberal view of the circumstances in which other States must be deemed to have knowledge of the coastal State's claim as well as of the circumstances in which they must be held to have acquiesced. Accordingly, if the Court took the same line in similar cases which might come before it in the future, it should not be too difficult for countries to establish their historic rights.

9. Mr. SANDSTRÖM could not agree with the Secretary that there was a contradiction between the Special Rapporteur's text and paragraph 2 of the resolution which had already been adopted on the proposal of Mr. Amado,<sup>3</sup> since the latter represented only a first step in clearing the ground. The Commission, as far as he had understood, had never intended to stop there. The Special Rapporteur had accordingly proceeded to give more concrete form to the expression of opinion contained in Mr. Amado's text, and even Mr. François' proposal would not necessarily be the last word, for he had already announced the possibility of adding a provision concerning the competence of the international organ called upon to pronounce on the legitimacy of

claims. The final outcome of the Commission's discussion would depend on the functions to be given to that organ.

10. Mr. LIANG (Secretary to the Commission) agreed with Mr. Sandström that the Special Rapporteur's text took the Commission a step further. When pointing to a slight discrepancy between the two texts at the previous meeting, he had assumed that the essential elements in Mr. Amado's draft, notably the perfectly definite provision contained in the latter part of paragraph 2, might be incorporated in Mr. François' proposal which could form one of the articles in the draft. Given that the two texts were designed to serve a different purpose their amalgamation involved more than a question of drafting, however, and the Commission would do well to define its position with regard to that of the Special Rapporteur.

11. Mr. FRANÇOIS (Special Rapporteur) in reply to Mr. Hsu's remarks at the previous meeting, said that his text provided no solution for the hypothetical case of a country's refusing to recognize an extension beyond the three-mile limit and to submit the dispute to arbitration. He would like to make it perfectly clear that far from claiming to have provided a final solution of the whole problem of the breadth of the territorial sea he had only sought in his proposal to reflect the disagreement in the Commission. The three-mile rule alone had been generally recognized as binding on all other States, and he had therefore mentioned it in his text; any extension beyond that distance must obtain the sanction of an independent judicial authority if its recognition were to be obligatory on other States. His text contained nothing new and was entirely realistic; it differed from that of Mr. Amado only as regards presentation.

12. The suggestion had been made that in disputed cases he had intended the International Court or the arbitral tribunal to determine solely whether treaty obligations or claims to an equal or greater breadth existed; that was not the case: as he saw it, the judges or arbitrators would have to examine the substance of the coastal State's claim and decide whether it was based on valid grounds.

13. He did not think that either Mr. Hsu or Mr. Zourek had provided a solution which would be acceptable to the Commission. In the unlikely event of the latter's proposal being adopted, each coastal State would be free to fix its territorial limit and other States would have to recognize that limit, as long as agreement could not be reached on any objective criteria. He also thought his own proposal (A/CN.4/93) for the establishment of an international organ within the United Nations with the power to render binding decisions in disputed cases relating to delimitation of the territorial sea had very little chance of winning support. In the circumstances he had concluded that there was no way out but to present a text of the kind he had put forward. If it were adopted Mr. Amado and himself might try and draft a single text which could perhaps command the support of the majority of the Commission.

<sup>1</sup> 310th meeting, para. 3.

<sup>2</sup> *I.C.J. Reports 1951*, p. 116.

<sup>3</sup> 311th meeting, para. 63.

14. Mr. ZOUREK, in reply to Sir Gerald Fitzmaurice's last statement at the previous meeting, said that he had not wished to minimize the importance of the group of States adhering to the three-mile limit but only to contest the assertion that that rule had to all intents and purposes been universally recognized. Even during the period when Sir Gerald claimed that it had been unchallenged the Scandinavian States had applied a four-mile limit and the Latin American States a six-mile limit. However, the purely numerical question was clearly not of decisive significance, since States adhering to the three-mile limit were now in a minority and the rest were divided.

15. Sir Gerald Fitzmaurice had argued that if the three-mile rule were not accepted as the correct one, the inevitable conclusion must be that the breadth of the territorial sea was not governed by international law, and that was precisely his (Mr. Zourek's) opinion.

16. It was clear that the Special Rapporteur's text was quite different in spirit from that of Mr. Amado since it embodied the three-mile rule while providing a slight consolation to States which applied another limit by allowing that extensions could be recognized if sanctioned by an arbitral decision or the assumption of treaty obligations by other States. That proviso was of course quite inadequate and moreover tended to downgrade any limit in excess of three miles, apart from cases of historic title to four miles, to the status of a mere claim. In other words States were being asked to accept the three-mile limit coupled with a promise that extensions could be examined. Such an approach was of course entirely unrealistic as States were most unlikely to entertain any proposition which might threaten their sovereignty, and it must be remembered that the territorial sea reflected certain requirements which were important to the life and economy of States. The Commission should accordingly not deceive itself about the possibility of the Special Rapporteur's proposal being accepted by governments. Furthermore, the proposal nullified the Commission's decision to adopt Mr. Amado's text, which admitted the legitimacy of extensions up to twelve miles. That text, however, would remain nothing but a pious wish if the Special Rapporteur's proposal were adopted, whereby extensions beyond three miles would be subject to the consent of other States; for such consent would probably not be forthcoming once the three-mile rule had been declared the rule of international law.

17. Mr. FRANÇOIS (Special Rapporteur) said that there had been some misunderstanding if Mr. Zourek supposed that the Commission, in adopting Mr. Amado's text, had recognized the legitimacy of any extensions beyond three miles but not over twelve.

18. Mr. ZOUREK explained that he had not wished to imply that "any" extension up to twelve miles was recognized.

19. Mr. AMADO reaffirmed that it was the primary duty of States to protect the interests of their peoples. The generous and altruistic State was a figment of the

imagination of Utopians; jurists should keep their feet on the ground appraising any given situation coolly and without emotion. He had not set himself the task of trying to solve the problems of the world, but had been guided by the irrefutable fact that certain countries adhered to the three-mile limit and were not likely to abandon it, and that the others claimed sovereignty over a twelve-mile belt. No amount of legal casuistry would alter that situation, and he doubted whether the Commission could go much beyond the resolution adopted at the 311th meeting (para. 63), or whether the Special Rapporteur's proposal and that resolution were compatible.

20. The CHAIRMAN, speaking in his personal capacity, suggested that the Special Rapporteur's text might be somewhat softened down and rendered more flexible if the first paragraph laying down the three-mile rule were deleted and the opening words of the second paragraph were replaced by the following text:

"Whatever may be the breadth of the territorial sea according to (contemporary) international law, and subject to any historical rights which a State may claim regarding the extent of its territorial sea, other States are under an obligation to recognize a breadth of territorial sea exceeding three nautical miles if:"

Provisos 1 and 2 would remain unchanged.

21. Mr. KRYLOV said that the Chairman's important proposal should be circulated in writing as quickly as possible.

22. Mr. HSU said that the Special Rapporteur's reply to the question he had put at the previous meeting had failed to take into account that the recalcitrance of a single State might obstruct progress in a whole region and cause great hardship. However, since States were actuated entirely by self-interest, it would perhaps be wise to leave it to them to settle the whole question of delimitation, as was implied in paragraph 3 of Mr. Amado's original proposal.<sup>4</sup>

23. Faris Bey el-KHOURI, replying to Mr. Zourek's contention that no State would brook interference with its sovereignty, pointed out that limiting the breadth of the territorial sea did not constitute such interference but was merely a kind of interdict, to prevent States from claiming a right to encroach upon the *res communis*.

24. In view of recent developments, and particularly the claims made by certain Latin American countries such as Ecuador, which had submitted a memorandum on the subject to the Commission, reference to "historical rights" was insufficient and he therefore proposed that those words be followed by the words "or national necessities" in the first paragraph of the Special Rapporteur's text. He also proposed the insertion of the words "up to a maximum of twelve miles" after the words "greater breadth", which would bring the text into line with that adopted at the 311th meeting (para. 63). That proviso was necessary because,

<sup>4</sup> 309th meeting, para. 14.

although the three-mile rule had obtained universal recognition, certain States did claim a greater extension and it was essential to secure agreement on the text, otherwise coastal States would act unilaterally and international friction would inevitably result. However, any extensions beyond three miles should receive the sanction of the International Court or any other international organ to which the function of adjudicating disputed cases was assigned. He therefore proposed that the second paragraph of the Special Rapporteur's text be amended to read:

"Other States are under an obligation to recognize territorial waters fixed by the coastal State up to a maximum of twelve miles provided that such extension is recognized as legitimate by an international organ established for this purpose in the framework of the United Nations or by the International Court of Justice."

25. Mr. AMADO, referring to the question of national necessities, said that he had just received a paper written in defence of the 200-mile limit by Mr. García Sayan, who had been responsible for the Peruvian Declaration of 1947.<sup>5</sup> States were seeking to protect certain interests while forgetting the real nature of the territorial sea.

26. Mr. HSU supported Faris Bey el-Khouri's amendments to the first paragraph but hoped that some more precise term might be found for "national necessities".

27. Replying to a question by Mr. SALAMANCA, the CHAIRMAN said there was little difference of substance between the Special Rapporteur's proposal and his own amendment. The main purpose of his amendment was to dispel the impression which appeared to exist that the Special Rapporteur's proposal was purely and simply the consecration of the three-mile rule.

28. Mr. FRANÇOIS (Special Rapporteur) accepted the Chairman's amendment because it brought out that his proposal did not amount in substance to a disguised plea in favour of the three-mile rule.

29. Mr. SALAMANCA said that, to his mind, the Special Rapporteur's proposal—with or without the amendment which he had just accepted—was incompatible with the resolution adopted at the 311th meeting on the proposal of Mr. Amado.

30. Mr. KRYLOV agreed that the Special Rapporteur's proposal was not compatible with that resolution, by which the Commission had already decided that any extension of the territorial sea up to a distance of less than twelve miles was permissible under international law. If the Special Rapporteur's proposal were now adopted, the Commission would be considering the three-mile rule as the only one accepted by international law.

31. It was essential for the Commission to take a vote on the question whether or not it considered the three-mile rule as part of international law. He felt sure, for

his part, that the majority of the Commission would answer that question in the negative.

32. It was desirable for the Commission to arrive at some internationally agreed definition of the breadth of the territorial sea, but failing that, the next best course was for the Commission to proclaim that States had the right to delimit their own territorial sea.

33. Mr. AMADO said that the initial words of the Chairman's amendment to the Special Rapporteur's text ("Whatever may be the breadth of the territorial sea...") were perhaps not quite adequate. Possibly what was intended was rather a phrase along the following lines: "The Commission, finding itself unable to formulate a uniform criterion regarding the proper extension of the territorial sea...;"

34. For his part, he did not approve of the text of article 3 which was being proposed. He felt that the Commission could go no further than it had gone at its 311th meeting, when adopting his (Mr. Amado's) proposal. By that decision, the Commission had stated the present position with regard to the claims to a territorial sea of between three and twelve miles. It had said as much as was possible by declaring that any extension beyond twelve miles was not in conformity with international law.

35. He urged the Commission not to define the position any more closely, in view of the fact that the urgent needs of States were compelling them to take action in the matter of the breadth of the territorial sea. He felt very strongly that those States which were endeavouring to extend their territorial sea were doing so largely in view of their fishing interests and problems. He suggested that the Commission's draft articles on the conservation of fisheries should be given as wide publicity as possible, so that those States might be reassured regarding their interests; that might possibly modify their attitude with regard to the extent of the territorial sea.

36. Mr. SCELLE said that the resolution adopted on Mr. Amado's proposal did not imply that States were entirely free to extend their territorial sea to any distance between three and twelve miles. The resolution did not solve the question of the validity of such claims and only ruled out those in excess of twelve miles.

37. For his part, he (Mr. Scelle) felt that a distance of twelve miles was perhaps not the real criterion of validity. A State having valid reasons for it might perhaps be entitled to claim more than twelve miles; on the other hand, a claim to less than twelve miles (but more than three) might well be illegitimate because there was no justification for it.

38. He requested that provisos 1 and 2 in the Special Rapporteur's text of article 3, as now amended, be voted separately. He disapproved of the final phrase of proviso 1, which was based on a somewhat artificial concept of reciprocity. According to it, a State which was justified in claiming a territorial sea of more than three miles would be obliged to recognize a similar claim

<sup>5</sup> See text in *Laws and Regulations on the Régime of the Territorial Sea* (United Nations publication, Sales No.: 1957.V.2), pp. 38-39.

by some other State. But it might well be that that other State had no justification whatsoever for claiming more than three miles—in which case there was no reason why a State which had validly adopted a greater distance than three miles should be obliged to recognize an unfounded claim. Instead he suggested that there should be a proviso to the effect that a State was under an obligation to recognize the territorial sea fixed by the coastal State at a greater breadth than three miles, if it made a unilateral declaration accepting the coastal State's claim.

39. In spite of its imperfections, the Special Rapporteur's proposed article 3 constituted genuine progress.

40. Mr. GARCÍA AMADOR said the Special Rapporteur's text did not exclude the possibility of a territorial sea of more than three miles; it merely laid down that such a claim could only be validly made under certain circumstances.

41. The impression existed both within and without the Commission—the latter as shown by the article from the London *Times* quoted by Mr. Edmonds at the previous meeting<sup>6</sup>—that, by its resolution adopted on the proposal of Mr. Amado, the Commission had accepted the idea that a State could validly extend its territorial sea to more than three miles and less than twelve.

42. In view of that impression, it was essential that the Commission should lay down the conditions under which a State could properly extend its territorial sea beyond three miles and expect other States to recognize its claim.

43. The Special Rapporteur's proposal could satisfy that requirement provided it was amended to meet the following criticisms. First, the reference to "historic rights" was too vague; besides, it was concerned with the past and could not be of assistance where new situations arose. A more precise formulation would be to make reference to national necessities of an economic, social or political character. That idea was contained in the opening phrase of Faris Bey el-Khourî's amendment to the first paragraph.

44. Secondly, the reference in proviso 1 to treaty obligations was quite superfluous. It was obvious that, if a State entered into a treaty undertaking to recognize the territorial sea of another State, it would have to abide by the treaty it had signed.

45. Thirdly, he agreed with Mr. Scelle in disapproving of the superficial notion of reciprocity embodied in the final phrase of the same proviso. A State might be justified in claiming more than three miles for its territorial sea without being obliged to recognize similar claims by other States which were not based on historical grounds or national necessity.

46. Fourthly, proviso 2, in its reference to the International Court of Justice, merely provided for respect

for judicial decisions. What was required, however, was a reference to the necessity of judicial intervention—or compulsory arbitration—in all future disputes over the breadth of the territorial sea. Such a system would be in line with the one adopted by the Commission in its articles on fisheries.<sup>7</sup> There was some analogy between the two situations, in that both the conservation of fisheries and the delimitation of the territorial sea were concerned with the extension of the State's jurisdiction into the high seas. For those reasons, he approved of Faris Bey el-Khourî's amendment to proviso 2 inasmuch as it referred to the International Court's competence.

47. Mr. SALAMANCA said the Special Rapporteur's intention was to lay down a uniform rule and the text which he proposed for article 3 made it clear that States were not free to extend their territorial sea beyond three miles.

48. Sir Gerald Fitzmaurice had suggested that because the three-mile rule was uniform among a certain number of countries, that fact made the marine league a rule of international law. In making that suggestion his criteria, however, were presumably qualitative, but as lawyers the members of the Commission would know that a rule of international law required a quantitative criterion; only such a criterion would give the rule a universal validity based on general acceptance and reciprocity. Important as they were, the States adhering to the three-mile rule represented a minority of the States of the world. Indeed, in the General Assembly, they numbered only fifteen—i.e., only a quarter of the membership of the United Nations.

49. The so-called three-mile rule had made its appearance well after the discovery of America, and it was a historical fact that that rule had been imposed by force by those great maritime States which claimed it now to be a rule of law.

50. At The Hague Conference for the Codification of International Law in 1930, it had been clearly demonstrated that the three-mile rule did not enjoy general acceptance. In the words of Professor Gilbert Gidel—the great authority on the international law of the sea—the so-called three-mile rule had been utterly defeated at that conference (*La prétendue règle des trois milles a été la grande vaincue de la Conférence*). Professor Gidel added that in future, it would be impossible to speak of the three-mile rule as constituting a norm of positive international law.<sup>8</sup>

51. It was now a quarter of a century since The Hague Codification Conference had taken place. The three-mile rule, which had not been accepted as part of international law in 1930, could still less be so described 25 years later. After 1930 a great majority of States had departed from the three-mile rule, fixing the limit of their territorial sea at 4, 6 or 12 miles. Despite that

<sup>7</sup> 305th meeting, para. 88.

<sup>8</sup> G. Gidel, "La Mer Territoriale et la Zone Contigüe", *Recueil des Cours de l'Académie de droit international*, vol. 48 (1934), p. 193.

<sup>6</sup> 312th meeting, para. 3.

undeniable fact the Special Rapporteur and some members of the Commission were trying to impose the three-mile rule, thereby granting to countries which applied the three-mile limit the privilege of objecting to any other distance. In that way, the countries adhering to the three-mile limit would be the rulers of the seas. On the basis of the proposal presented by the Special Rapporteur, any other breadth of the territorial sea would be a precarious one, unless recognized by all the countries adhering to the three-mile rule. A principle of international law could not be established by taking into consideration only the point of view of the minority as against the majority, even if the majority did not adhere to a uniform breadth of the territorial sea but claimed 4, 6 or 12 miles. Should the Commission decide in favour of the three-mile rule, it would go beyond its powers of codification and under-estimate the political factors which were dominant in the world and in the General Assembly.

52. The resolution voted by the Commission at its 311th meeting (para. 63) on the proposal of Mr. Amado was totally incompatible with the text the Special Rapporteur proposed for article 3. The merit of that resolution lay precisely in its somewhat vague terms. By stating the facts as they really were, it went as far as the Commission could possibly go in the matter of defining the breadth of the territorial sea. The Special Rapporteur's proposed text, on the other hand, endeavoured to lay down as a norm of international law a rule which was only accepted by a minority of States. The fact that that minority included many of the larger maritime powers did not exclude the fact that they were outnumbered in the General Assembly by three to one—a fact which the Commission could not afford to ignore when considering the fate of its draft articles on the territorial sea.

53. It was true that the Commission was a technical body composed of members who did not represent their countries. But just as it could not afford to ignore political considerations which were bound to loom large during future discussion of its draft articles in the General Assembly, the Commission had also to bear in mind that its members were chosen with a view to geographical representation. For his part, he (Mr. Salamanca) felt it his duty to point out that in the whole of the Spanish-American world, comprising nineteen sovereign States, only two or three adhered to the so-called three-mile rule.

54. The Latin-American States which were claiming a greater breadth for their territorial sea were doing so on the ground of needs which had become manifest only recently—long after the so-called three-mile rule had been imposed by force by certain important maritime powers.

55. He urged the Commission, now that it had voted the resolution proposed by Mr. Amado, to adopt the wise course of not attempting any further elucidation of the question of the breadth of the territorial sea. If the Commission were to avoid such attempts, it would still be open to it to renew its discussions at its next

session and perhaps arrive at a more precise formulation in the matter.

56. He therefore formally proposed that further debate on the item under discussion be deferred until the next session and that the Commission should not discuss any other proposal on article 3.

57. The CHAIRMAN said that under rule 117 of the rules of procedure of the General Assembly (A/3660)<sup>9</sup> two members could speak in favour of, and two against, the motion which had been proposed by Mr. Salamanca.

58. Mr. GARCÍA AMADOR recalled that he had been in favour of postponing discussion of article 3 before the resolution proposed by Mr. Amado had been voted on by the Commission. For the reasons which he had given at a previous meeting<sup>10</sup> he had felt that the Commission would have done well to defer consideration of the breadth of the territorial sea until the draft articles on fisheries had been submitted to States and their reactions thereto had become known.

59. The adoption of the resolution proposed by Mr. Amado had altered the situation completely. The Commission had taken a stand which was liable to give the impression that it had acknowledged the validity of claims to a territorial sea of more than three, but less than twelve, miles. It was no longer possible for further discussion to be deferred, unless the decision to defer further discussion subsumed also the principles embodied in the resolution proposed by Mr. Amado.

60. Sir Gerald FITZMAURICE pointed out that that resolution had been voted and could therefore not be affected by a decision to defer further discussion.

61. Mr. LIANG (Secretary to the Commission) said that the resolution proposed by Mr. Amado would always remain on the record now that it had been adopted. However, the Commission could well decide to defer further discussion of the whole question of the breadth of the territorial sea; and since the principles expressed in the resolution bore on that question, they would, in that sense, be reserved for further discussion too.

*Mr. Salamanca's proposal to defer further discussion of the question of the breadth of the territorial sea was rejected by 8 votes to 4, with 1 abstention.*

62. Mr. AMADO felt that, in substance, the Special Rapporteur's proposals were not altogether incompatible with the resolution adopted at the 311th meeting, following his (Mr. Amado's) proposal.

63. There was indeed a difference between his system and that of the Special Rapporteur in that he (Mr. Amado) proposed to leave the matter of claims to a territorial sea of more than three, and less than twelve miles to be elucidated by State practice, and perhaps future arbitral awards and judicial decisions. The Special Rapporteur, on the other hand, was attempting in his text to lay down some precise rules with regard to the validity of such claims.

<sup>9</sup> United Nations publication, Sales No.: 1957.1.24.

<sup>10</sup> 308th meeting, paras. 67–69.

64. For his part, he (Mr. Amado) felt that it would not be altogether realistic for the Commission to go any further than it had already gone.

65. Mr. GARCÍA AMADOR proposed that the Commission take a vote on the fundamental principles underlying Faris Bey el-Khouri's proposals. The two main principles were: firstly, the recognition of national interest as a justification equal in importance to historical rights; and, secondly, the provision for the jurisdiction of the International Court of Justice.

66. Sir Gerald FITZMAURICE gave notice of his intention to speak on Faris Bey el-Khouri's proposals (see para. 24 above) as soon as he had an opportunity to study them more closely.

*Further discussion of article 3 was adjourned.*

The meeting rose at 1 p.m.

### 314th MEETING

*Friday, 17 June 1955, at 10 a.m.*

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*Chairman*: Mr. Jean SPIROPOULOS

*Rapporteur*: Mr. J. P. A. FRANÇOIS

*Present*:

*Members*: Mr. Gilberto AMADO, Mr. Douglas L. EDMONDS, Sir Gerald FITZMAURICE, Mr. F. V. GARCÍA AMADOR, Mr. Shuhsi HSU, Faris Bey el-KHOURI, Mr. S. B. KRYLOV, Mr. Carlos SALAMANCA, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCELLE, Mr. Jaroslav ZOUREK.

*Secretariat*: Mr. LIANG, Director of Codification Division, Office of Legal Affairs, Secretary to the Commission.

**Régime of the territorial sea (item 3 of the agenda)**  
(A/2693, A/CN.4/90 and Add.1 to 5, A/CN.4/93, A/CN.4/L.54) (continued)

PROVISIONAL ARTICLES (A/2693, CHAPTER IV)  
(continued)

*Article 3 [3]: Breadth of the territorial sea (continued)*

1. Mr. SANDSTRÖM proposed the following text for article 3:

“Subject to any historic rights which a State may claim over a greater breadth, the breadth of the territorial sea which a State can lawfully claim against all other States is three nautical miles.

“Other States are under an obligation to recognize territorial waters fixed by the coastal State at a greater breadth than that laid down in the foregoing paragraph only if

“1. They have assumed treaty obligations in the matter, or claim an equal or greater breadth for their own territorial sea,

“2. As a result of a dispute referred to the International Court of Justice, the Court recognizes that the claim of the coastal State is based on a historic right or justified by the legitimate requirements of that State.”

2. The only difference between that text and the one proposed by the Special Rapporteur<sup>1</sup> was an amendment to proviso 2 in the second paragraph. The change was intended to specify that it was for the International Court of Justice to adjudge on the question whether a coastal State's claim was based on a historic right or justified by its legitimate requirements.

3. Sir Gerald FITZMAURICE said he could not accept Faris Bey el-Khouri's amendments<sup>2</sup> to the text proposed by the Special Rapporteur because of the reference therein to “national necessities”.

4. The Commission had already recognized the coastal State's claim to reasonable fishery conservation rights. It had also recognized its special rights, in the contiguous zone. Given those two sets of rights, there was no necessity whatsoever for a State to make a claim to sovereignty in the sea off its coasts beyond three miles.

5. With a very few possible exceptions, no national necessity could be quoted which was not already taken care of by fishery conservation rights and by the contiguous zone as defined by the Commission.

6. An excellent illustration was provided by the Norwegian fisheries dispute. If ever there had been a case where a country could claim national necessities it was Norway. That was apparent from the judgment of the International Court of Justice; it was even clearer if one referred to the pleadings presented on behalf of the Norwegian Government in that dispute. And yet Norway had made a claim only to four miles of territorial sea and, in doing so, had based that claim not on national necessities but on long-standing historical usage. Iceland provided another example of genuine national necessities in spite of which the claim was to four miles, based on long-standing historical usage.

<sup>1</sup> 310th meeting, para. 3.

<sup>2</sup> 313th meeting, para. 24.