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Summary record of the 318th meeting

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

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constitute the indentation more than a mere curvature of the coast.”⁹

He had amended that text by the addition of the words “as to contain landlocked waters”—an idea taken from the dissenting opinion of Judge McNair in the same case.¹⁰

55. He had not adopted the so-called 10-mile rule because the International Court of Justice had explicitly that rule. Indeed the Court had noted that:

“The United Kingdom Government concedes that Norway is entitled to claim as inland waters all the waters of fjords and sunds which fall within the conception of a bay as defined in international law whether the closing line of the indentation is more or less than 10 sea miles long. But the United Kingdom Government concedes this only on the basis of historic title.”¹¹

56. In dealing with specific fjords, the International Court of Justice had not hesitated to acknowledge as bays such indentations as the Svaerholthavet and the Vestfjord, the mouths of which were as wide as 39 and 40 miles respectively, in the light of all the geographical factors involved. On the other hand, certain Norwegian claims in respect of the Lophavet had not been accepted by the Court, again without any reference to a 10-mile distance.¹²

57. Paragraph 2 of his proposal was based on the definition of a bay given in paragraph (7) of the United Kingdom Government’s conclusions in the Fisheries Case.¹³ That definition had been implicitly recognized by the International Court of Justice and tallied with historical tradition, which considered the waters of a bay as being those which were enclosed within the line *inter fauces terrarum*.

58. Proviso (b) in paragraph 3 had been taken from the proposals of the 1930 Codification Conference.

59. Paragraph 6 was based on the Harvard Draft dealing with the problem of a bay the waters of which were bordered by the territory of two or more States. The Harvard group had studied that problem following the dispute¹⁴ between El Salvador and Nicaragua (1917) brought before the Central American Court of Justice in connexion with the Gulf of Fonseca, the shores of which were shared by Honduras, Nicaragua and Salvador.

Further discussion of article 7 was adjourned.

The meeting rose at 1 p.m.

⁹ *I.C.J. Reports 1951*, p. 122.

¹⁰ *Ibid.*, p. 163.

¹¹ *Ibid.*, p. 131.

¹² *Ibid.*, pp. 141–143.

¹³ *Ibid.*, p. 122.

¹⁴ *American Journal of International Law* (1917), vol. 11, pp. 674 and 705.

318th MEETING

Thursday, 23 June 1955, at 9.30 a.m.

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* The number within brackets indicates the article number in the draft contained in Chapter III of the Report of the Commission (A/2934).

Chairman: Mr. Jean SPIROPOULOS

Rapporteur: Mr. J. P. A. FRANÇOIS

Present:

Members: Mr. Douglas L. EDMONDS, Sir Gerald FITZMAURICE, Mr. F. V. GARCÍA AMADOR, Mr. Shushi HSU, Faris Bey el-KHOURI, Mr. S. B. KRYLOV, Mr. Carlos SALAMANCA, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCHELLE, 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 7 [7]: Bays (continued)

1. Mr. FRANÇOIS (Special Rapporteur) said that there was a considerable difference between the text which he proposed in document A/CN.4/93 and that submitted by Mr. García Amador.¹ The former defined a bay as an indentation the entrance of which was not more than twice its depth. The latter provided a definition which, when applied, might be found to be a *petitio principii*. Moreover, the expression “landlocked waters”, even in the sense ascribed to it by the International Court of Justice in the Fisheries Case,² was imprecise. He realized that in paragraph 3 Mr. García Amador had sought to avoid a fixed limit for the closing line of a bay, but that did not solve the problem since, according to his text, the waters of a bay which was a hundred miles wide at the opening and fifty miles in depth would become inland waters, and that would be absolutely unacceptable. The possibility of admitting a greater limit than ten miles could be contemplated, but not without any limitation as proposed by Mr. García Amador.

¹ 317th meeting, para. 52.

² *I.C.J. Reports 1951*, p. 116.

2. He was doubtful whether proviso (b) in paragraph 3 of Mr. García Amador's text was necessary since, if a bay was bordered by the territory of two States, the demarcation line between internal waters and territorial sea would still remain the same. The second part of paragraph 6, relating to cases where there was a dispute about the demarcation line, did not offer an equitable solution and he believed that the matter would have to be settled by arbitration.
3. The result of establishing no fixed limits could also be seen in paragraph 5. He himself had suggested that when there was a series of islands at the opening of a bay they should be treated as a continuous strip of land provided the distance between each of them did not exceed a certain limit. Mr. García Amador had rejected that limit without substituting any other. That again was unacceptable.
4. Though he appreciated the reasons why Mr. García Amador's text contained no fixed limits, he did not think that in its present form it could command support.
5. Mr. SALAMANCA expressed disappointment at the failure of both texts to cover the case of the River Plate. Though that case would come up in connexion with article 14, the decision would clearly depend on the outcome of the present discussion concerning bays. The Commission would remember that Argentina considered that the mouth of the River Plate constituted a bay, whereas Uruguay held that it was an estuary, and the two governments could come to no agreement about the demarcation line. The rights of the coastal states, however, did not affect the freedom of navigation, which had been safeguarded in conventions between South American States and conventions with the United Kingdom. The area in question was very wide and shallow with a great number of sandbanks making navigation difficult. Though the case was an exceptional one it was important and could not be covered if a ten-mile limit were accepted. Clearly geographical factors must determine the solution and he hoped that both the Special Rapporteur and Mr. García Amador would take the problem into account, otherwise the provision finally adopted might give rise to serious objections on the part of certain States.
6. Sir Gerald FITZMAURICE doubted whether Mr. García Amador had been well advised to introduce certain proposals derived from the conclusions presented by the United Kingdom Government in the Fisheries Case into a draft the general spirit of which was wholly contrary to the well-known views of that government. Mr. García Amador's text was, on the contrary, in accordance with the Icelandic Government's opinion (A/2934, Annex, No. 7), which, as he understood it, was that there should be no limit as to the length of the closing line.
7. He thought that Mr. García Amador had perhaps adopted the definition of a bay contained in paragraph (6) of the United Kingdom Government's conclusions and had incorporated in his paragraph 2 the wording used in paragraph (7) for tactical reasons rather than from conviction as to their intrinsic merit.
8. Introducing his proposal at the previous meeting, Mr. García Amador seemed to have inferred with some satisfaction that the Court had rejected the United Kingdom's contention about the so-called ten-mile rule; but in fact the United Kingdom had put forward no such submission and had conceded in paragraph (5) of its conclusions that "Norway is entitled to claim as Norwegian internal waters, on historic grounds, all fjords and sunds which fall within the conception of a bay as in international law (see No. (6) below), whether the proper closing line of the indentation is more or less than 10 sea miles long".³ The limit of ten miles for bays had never been an issue before the Court and its observations on the question had been gratuitous; being in the nature of an *obiter dictum*, not necessary for the decision of any issue in the case, they carried no direct authority and could not be regarded as binding.
9. Mr. Krylov had been mistaken in stating that the ten-mile rule had been either invented or championed mainly by France and the United Kingdom. In fact until fairly recently the United Kingdom had held that the proper closing line of a bay was twice the breadth of the territorial sea, in other words six miles, and it had only admitted the extension to ten miles with the greatest reluctance.
10. The Commission would note that it emerged from the observations of Sub-Committee II of the Conference for the Codification of International Law—reproduced in the Special Rapporteur's second report (A/CN.4/61, para. 57)⁴—that the majority of delegations at that Conference had accepted a limit of ten miles. The statement of the Court that the ten-mile rule had not acquired the authority of a rule of international law was therefore questionable.
11. Though the definition contained in paragraph 1 of Mr. García Amador's text was quite a good one, he greatly preferred the one offered by the Special Rapporteur on the basis of the report of the Committee of Experts (A/CN.4/61/Add.1)⁵ which had sat in 1953. He much regretted that the Commission did not, where possible, follow the conclusions of a body of men who had special knowledge of the geographical aspect of problems connected with the territorial sea and were particularly well versed in maritime law.
12. Paragraph 2 of Mr. García Amador's text was misleading. Though it reproduced the wording of paragraph (7) of the United Kingdom's conclusions, the purpose of that paragraph had been entirely different. Its sole object had been to indicate the points between which a closing line should be drawn. It had never been intended to suggest that there was no limitation whatsoever on its length.
13. He had little to add to the Special Rapporteur's remarks about the merits of Mr. García Amador's text,

³ *I.C.J. Reports 1951*, p. 122.

⁴ *Yearbook of the International Law Commission, 1953*, vol. II.

⁵ *Ibid.*

which showed to what exaggerated use general statements in the Court's judgement in the Fisheries Case could be put. He was unable to see on what grounds it could be deduced from the Court's passing reference to the ten-mile limit that there was no limit whatsoever: a conclusion which would make nonsense of the well-known concept of the historic bay. Yet that concept had certainly formed part of international law in 1951. Unfortunately, in overthrowing one limit the Court had failed to establish another, thereby creating confusion. Such incomplete statements were to be deprecated. The implication of Mr. García Amador's text, which he could not support, was that henceforth the waters enclosed by a bay even three hundred miles wide at its mouth would become internal waters.

14. Mr. GARCÍA AMADOR did not think that the expression "land-locked waters" could be condemned on the grounds that it was imprecise since it had been used not only by Sir Arnold McNair, whose respect for the exact meaning of words could surely not be impugned, but also by the United States Government in its reply to the Commission's questionnaire (A/CN.4/19, section C, No. 10).⁶

15. It would be quite incompatible with international practice to substitute for his definition a ten-mile limit. The Court in its judgement in the Fisheries Case had made clear that closing lines of a greater length were not contrary to international law; that statement by the Court had greater weight than the conclusions of an expert committee most of whose members represented countries adhering to a three-mile limit for the territorial sea.

16. The Court in making its general statement about bays must have had in mind the fact that many, of which he gave some examples, were considerably wider than ten miles at the mouth. He was, therefore, unable to understand on what grounds the Committee of Experts had defended a ten-mile limit.

17. He had some sympathy with the objections raised by the Special Rapporteur to paragraph 6, which was taken from the Harvard Research Draft. If a bay was bordered by three States, they should be allowed to claim a territorial belt but no more.

18. Turning to Sir Gerald Fitzmaurice's statement, he did not propose to enter into the question of the sources from which his text was derived. It was perfectly appropriate for members of a Commission which should regard itself as a guardian of the interests of an Organization comprising many different nations to take advice from one of the Member States which was not necessarily their own. He had chosen the principles set out in the United Kingdom's conclusions because of their intrinsic worth. He hoped that his text would be examined in the light of the Court's judgement, which so far had been the main source of the rules proposed.

19. Mr. ZOUREK considered that Mr. García Amador's proposal constituted a good starting-point for solving the problems connected with the definition of bays. Flexibility was its chief merit since the practice of States varied greatly and a provision containing a rigid limitation of the kind contained in paragraph 1 of the Special Rapporteur's text was not likely to be widely accepted.

20. He agreed with those members who did not regard the conclusion of the Committee of Experts as authoritative because most of its members represented countries which upheld the three-mile rule. Moreover, the conclusion differed essentially from the definition of bays submitted by the United States delegation to the 1930 Hague Conference for the Codification of International Law;⁷ that showed that technical opinion was divided as to geographical criteria.

21. Perhaps Mr. García Amador's text would need some modification. First, if proviso (b) in paragraph 3 were retained, it should be linked with proviso (a). Secondly, paragraphs 4 and 5 might be amalgamated as they dealt with one subject. Thirdly, a provision should be made for the criteria adopted by States to be published, in order that mariners might know which indentations came within the definition of a bay.

22. He considered that the Commission should take a vote on principles, deciding first on the definition and secondly on whether there should be any limitation on the length of the closing line. The Drafting Committee could then prepare a text for submission to a final vote.

23. Mr. SANDSTRÖM said that he was in general agreement with Mr. François and Sir Gerald Fitzmaurice. It was difficult to formulate a juridical definition based on geographical factors and he considered the definition in paragraph 1 of Mr. García Amador's text to be, if not a *petitio principii*, at any event extremely vague. The Norwegian fjords had attracted a good deal of attention, but it should be noted that their configuration was quite special, since they penetrated deep into the land, sometimes almost up to the Swedish frontier. Moreover, they were generally surrounded by high mountains, so that in that context the concept of landlocked waters was a natural one. It was not appropriate, however, when the indentation was shallow.

24. Mr. García Amador had not taken into account existing rights over waters which had hitherto been regarded as part of the high seas. For example, according to his text the Gulf of Bothnia would become internal waters and the existing rights of non-coastal States would thereby be abrogated. The same would be true of the Adriatic Sea, since, by the geographical criteria proposed by him, that too was a bay.

25. For those reasons he would support the Special Rapporteur's text.

⁶ *Yearbook of the International Law Commission, 1950*, vol. II, p. 60.

⁷ League of Nations publication, *V. Legal, 1929.V.2* (document C.74.M.39.1929.V), p. 144.

26. Mr. HSU said that the weakness of the Special Rapporteur's text was that it laid down a ten-mile limit. The United Kingdom's original practice in adhering to a six-mile limit, which was equivalent to double the width of its territorial sea, was the most logical, but if the three-mile rule no longer held good, ten miles might well be insufficient for modern needs.
27. He still had some doubts about claims to historic bays and felt that they called for further discussion.
28. Although Mr. García Amador's text might require some amendment, it was nevertheless the better of the two because it contained no fixed limit for the closing line and did not refer to historic bays. Perhaps the Commission should adopt the text provisionally and then re-examine it at the next session in the light of its final decision on the territorial sea. He warned members that if too rigid a stand were taken on existing rules, it would not be possible to meet new requirements; such new requirements must be met, though without causing hardship to those States continuing to abide by older rules or practice.
29. Mr. SCALLE said that the Commission must choose between two principles. He intended to support the numerical limit on the closing line of a bay because it offered the only clear and definite solution. The geographical definition proposed by Mr. García Amador would make it difficult to distinguish between bays and gulfs. Furthermore, it would have the most regrettable result of vast inroads being made upon the high seas. That would be far more harmful than extensions of the territorial sea and would lead to the obstruction of entry into ports, thereby prejudicing the interests of international trade. At the risk of being labelled a Cassandra, he must warn the Commission that the overthrow of the traditional concept of bays would, like the draft articles on the continental shelf, utterly transform the notion of the high seas as *res communis*.
30. Mr. EDMONDS wondered whether the Commission might not be well advised to defer further consideration of any controversial articles in the draft in order to be able to devote sufficient time to the discussion of the draft articles on fisheries and of its report on the session.
31. Mr. FRANÇOIS (Special Rapporteur) said that it would be a pity to interrupt the discussion and hoped that the few remaining articles in the draft could be disposed of fairly quickly provided that speakers could state their views briefly. The Commission could start its final reading of the draft articles on the régime of the high seas early the following week and devote the last week of its session to the Drafting Committee's text on the territorial sea and the report on the session.
32. Mr. EDMONDS, in the light of the Special Rapporteur's remarks, withdrew his suggestion.
33. Turning to the texts before the Commission, he said that Mr. García Amador's was in certain respects too indefinite. The Commission should endorse the principles embodied in the Special Rapporteur's draft.
34. Faris Bey el-KHOURI proposed that the depth of a bay be defined in proportion to the length of the closing line by means of a perpendicular line drawn through the centre, no account being taken of indentations within the bay.
35. Mr. FRANÇOIS (Special Rapporteur) suggested that if the Commission were to vote on principles it should start by selecting one of the two definitions before it.
36. Mr. ZOUREK observed that the definition contained in paragraph 2 of the Special Rapporteur's text also appeared in paragraph 3(a) of Mr. García Amador's proposal.
37. Mr. FRANÇOIS (Special Rapporteur) said that that was true but Mr. García Amador was using the definition in an entirely different context, and applying it in order to determine when the waters within a bay should be considered internal waters. In his own text he had sought to provide a definition of a bay without going into the entirely separate issue of the demarcation line between the territorial sea and internal waters.
39. He also wished to make clear that he recognized that the entrance to a bay as measured between two headlands could be much wider than ten miles. That did not, however, affect the closing line.
39. Sir Gerald FITZMAURICE agreed that paragraph 3 in Mr. García Amador's text did not relate to the definition of a bay. Nor did paragraph 1, which contained a good general description possibly helpful to a layman, provide a precise definition of the kind proposed by the Special Rapporteur. He therefore proposed that it be amplified by adding the following sentence at the end:
- "An indentation shall not, however, be regarded as a bay unless its area is as large or larger than that of the semi-circle drawn on the entrance of that indentation".
40. Mr. GARCÍA AMADOR said that he had no objection to Sir Gerald Fitzmaurice's amendment, which was complementary to his text.
41. He believed that the article should begin by defining a bay instead of first stating the juridical consequences of a definition as had been done by the Special Rapporteur.
42. Mr. SCALLE said that he would be unable to support Sir Gerald Fitzmaurice's amendment, because Mr. García Amador's text would still enunciate a geographical criterion, destroying the distinction between a bay and a gulf. In his opinion a bay could only be defined in juridical terms.
43. Mr. GARCÍA AMADOR said that geographers used the words "bay" and "gulf" as more or less synonymous terms.
44. Mr. SCALLE said that a bay was a small gulf. From a legal point of view, a bay existed inasmuch as international law acknowledged for it a particular status.

45. Mr. FRANÇOIS (Special Rapporteur) asked Faris Bey el-Khoury whether he would withdraw his proposed amendment (para. 34 above) concerning the depth of a bay. He (the Special Rapporteur) intended to put in the comment to article 7 a reference to the fact that the definition of a bay as an indentation with an area as large or larger than that of the semi-circle drawn on the entrance had virtually the same meaning as the statement that a bay was an indentation the depth of which was half the length of its closing line.

46. Faris Bey el-KHOURI withdrew his amendment on the understanding that a comment would be included as mentioned by the Special Rapporteur.

The Commission adopted paragraph 1 of Mr. García Amador's proposed text⁸ for article 7, as amended by Sir Gerald Fitzmaurice (para. 39 above), by 9 votes to none with 3 abstentions.

47. Mr. KRYLOV suggested that the Commission should not deal at that stage with the other paragraphs of article 7. The paragraph just voted was quite sufficient to define a bay in its essentials. The other provisions of the article were closely linked with the problem of the breadth of the territorial sea and it was therefore desirable to leave their discussion to the following session.

48. Mr. SANDSTRÖM said he could not agree to that suggestion. The General Assembly expected from the Commission a report on all the matters relating to the seas. It was therefore necessary to include a provision on bays and obtain comments from governments before the Commission's final report was drawn up at its next session.

49. Mr. GARCÍA AMADOR said the problem of bays had not given rise to very serious divergence of views within the Commission and he hoped that a solution would be found. It was undesirable for the Commission to give the impression that an impasse had been reached where none really existed.

50. Mr. KRYLOV withdrew his suggestion.

51. The CHAIRMAN proposed that the Commission take a vote on the principle involved — namely, whether some definite limitation of the length of the closing line of a bay was necessary.

52. Mr. GARCÍA AMADOR said he did not approve of a definite distance being laid down in the matter. The International Court of Justice, in the Fisheries Case, had not ruled that such a distance limitation existed. That did not of course mean that the closing line would be drawn arbitrarily, and the Court had clearly implied that certain criteria were essential in the matter; but the length of the closing line was not one of them.

53. Sir Gerald FITZMAURICE said that Mr. García Amador's proposed paragraph 2, in stating that "The closing line of a bay shall be drawn between the natural

geographic entrance points where the indentation ceases to have the configuration of a bay", did not really lay down any criterion at all. It merely stated the obvious fact that the closing line of a bay was drawn from headland to headland. The text in question could quite easily be applied to a gulf the entrance of which was 600 miles long.

54. In the Fisheries Case, the International Court of Justice had actually laid down no criteria at all to define a bay; it had simply said that certain Norwegian indentations could well have a closing line of more than ten miles.

55. The real issue before the Commission was whether the maximum length of the closing line should be fixed at some definite limit. Although, for his part, he considered that the ten-mile rule was part of international law, he would be prepared provisionally to accept a higher maximum figure, in order to mark his view that the essential thing was that some definite distance be laid down to stop abuses.

56. Mr. SCELLE said that a line from headland to headland could be drawn across any gulf, however large. For an indentation to be a bay and not a gulf, it was essential for it to conform to the one and only possible criterion — namely, that its closing line should not exceed a certain maximum distance.

57. Mr. GARCÍA AMADOR said the wording of paragraph 2 had been drawn from paragraph (7) of the United Kingdom Government's conclusions in the Fisheries Case, wherein it was stated:

"7. That, where an area of water is a bay, the principle which determines where the closing line should be drawn is that the closing line should be drawn between the natural geographical entrance points where the indentation ceases to have the configuration of a bay."⁹

58. It was quite normal to adopt the United Kingdom definition because the International Court of Justice had definitely repudiated the ten-mile rule when it held that closing lines of more than ten miles were not contrary to international law. Indeed, if a definite ten-mile rule had existed, such bays as Long Island Sound and Hudson Bay would not have been recognized as such.

59. It was necessary to point out that the provision concerning historic bays only benefited old countries having a long history. There were a great many comparative newcomers to international society — countries of Latin America, the Middle East and the Far East — which could not claim such historic rights. To lay down a ten-mile rule would simply mean that those new States would alone be subject to it, while the old-established States could claim larger bays on the strength of historic title.

60. The CHAIRMAN pointed out that the new States referred to by Mr. García Amador could we benefit

⁸ See *supra*, 317th meeting, para. 52.

⁹ *I.C.J. Reports 1951*, p. 122.

from historic rights asserted in the past by the Powers to which they had formerly belonged.

61. Mr. GARCIA AMADOR said that often the specific needs of a colony were not taken into account by a colonial Power, so that when that colony became independent, it did not inherit those historic rights to which it would have been entitled if it had lived for centuries as an independent nation.

62. Sir Gerald FITZMAURICE stressed that the length of the closing line of bays was not an issue in the Fisheries Case. There was no dispute between Norway and the United Kingdom on that point because all the bays concerned in the case had been conceded by the United Kingdom as historic bays.

63. The dispute between the United Kingdom and Norway, so far as it concerned bays, related to two issues: (1) the correct points of departure for the closing lines; and (2) the definition of a bay.

64. Because the length of the closing line of a bay was not an issue in the Fisheries Case, the conclusions presented by the United Kingdom Government, although containing a description of what constituted a bay, said nothing about the length of the closing line.

65. The International Court of Justice had stated the position perfectly clearly in the following terms in its judgement:

“As has been said, the United Kingdom Government concedes that Norway is entitled to claim as internal waters all the waters of the fjords and sunds which fall within the conception of a bay as defined in international law whether the closing line of the indentation is more or less than ten sea miles long. But the United Kingdom Government concedes this only on the basis of historic title; it must therefore be taken that that Government has not abandoned its contention that the ten-mile rule is to be regarded as a rule of international law.”¹⁰

66. Mr. GARCIA AMADOR suggested that a vote be taken on paragraph 2 of his proposal. It was desirable to vote on a text rather than on a principle. All members were agreed that some limitation was necessary. To ask members to vote for or against limitation by distance would load the scales against his proposal.

67. Mr. SCELLE said the principle involved was a clear one and it was desirable to vote upon it.

68. The CHAIRMAN pointed out that Mr. Garcia Amador's paragraph 2 was really not so much an amendment to the Special Rapporteur's text for article 7 as a new proposal altogether; it did not correspond to the definition of amendment given in rule 92 of the rules of procedure of the General Assembly.

69. Mr. ZOUREK said the Commission had to vote on whether or not objective criteria should be laid down for the definition of a bay. Other factors besides

the length of the closing line had to be considered. Mention had already been made of historical factors; but there were still other relevant considerations, such as the usefulness of a bay for industrial purposes, and its situation in relation to international sea lanes.

70. The CHAIRMAN called for a vote on the question whether the Commission should vote on principles.

The Commission decided in the affirmative, by 10 votes to none, with 2 abstentions.

71. The CHAIRMAN then called for a vote on the question of principle whether it should be stated that the closing line must not exceed a given length.

72. Sir Gerald FITZMAURICE said that there was some analogy between the problem under discussion and the question of the base line. Article 4 laid down the general principle that the base line for measuring the territorial sea was the coastline. Article 5 laid down certain specific criteria for exceptional cases where straight base lines could be drawn.

73. In connexion with bays, the position was somewhat similar. For an indentation to be considered as a bay, its closing line should not exceed ten miles; but in certain exceptional cases, where historic title existed, an entrance line of more than ten miles could be allowed.

The Commission decided by 6 votes to 4, with 2 abstentions, that the closing line of a bay should not exceed a given length.

74. Mr. HSU agreed that a numerical criterion was necessary; as the question was connected with the problem of the breadth of the territorial sea, however, it was desirable to postpone its consideration to the next session.

75. Mr. GARCIA AMADOR said that, when discussing article 5, the Commission had voted against any limitation of straight base lines by reference to their length. That vote had now been contradicted by adopting the principle of a maximum length for the closing line of a bay. Yet the two situations were exactly alike and the International Court of Justice had understood them as such.

76. Mr. ZOUREK agreed that the two decisions—on straight base lines and on bays—were inconsistent with each other. He stressed the necessity of bringing them into line.

77. Sir Gerald FITZMAURICE pointed out that article 5 was concerned with the exceptional case of a coast which was deeply indented or cut into; its provisions concerned Norway and a handful of other countries. The provisions on bays concerned not an exceptional type of coastline, but the coastlines of practically all maritime States. There were practically no coasts where bays did not exist.

78. Mr. FRANÇOIS (Special Rapporteur) said that, although he personally preferred the ten-mile limit, and with a view to achieving a compromise solution, he proposed, in his capacity as Rapporteur, that a 25-mile limit be adopted.

¹⁰ *Ibid.*, p. 131.

79. He had chosen the distance of 25 miles so that it would not be connected in anyone's mind with the breadth of the territorial sea. The Commission had already adopted very clearly the principle that under no circumstances was a State entitled to extend its territorial sea beyond 12 miles. In deciding, therefore, that the closing line of bays must not exceed 25 miles, the Commission could not be said to have fixed the distance as equivalent to twice the breadth of the territorial sea.

80. Mr. KRYLOV said he would prefer the closing line to be limited to twice the breadth of the territorial sea, except in the case of historic bays.

81. Mr. GARCÍA AMADOR said the choice of the distance of 25 miles was entirely arbitrary. The 10-mile distance, although not part of general international law, had at least in its favour the fact that it had been accepted in one multilateral treaty referring to the North Sea.

82. There appeared to be no juridical, historical, geographical or economic reason to accept the figure of 25 miles.

83. Mr. SCELLE pointed out to Mr. Krylov that a bay could have two coastal States claiming different distances as the breadth of the territorial sea.

84. Mr. KRYLOV said that the only answer to that problem was an agreement between the two States concerned.

85. Mr. SANDSTRÖM agreed that as the Commission had not laid down a definite distance for the breadth of the territorial sea, it was undesirable to define the closing line of the bay by reference to the breadth of the territorial sea, since that would only lead to controversy.

86. Sir Gerald FITZMAURICE said he would vote against any limitation of the closing line to twice the breadth of the territorial sea, although that conception had originally been supported by the United Kingdom. The fact of the case was that for a great many years ten miles had been recognized as the normal, "minimum" limit for the length of the closing line of a bay, more or less as the distance of three miles was the generally accepted, "minimum" limit for the breadth of the territorial sea.

87. The International Court of Justice in the Fisheries Case had ruled that the closing lines of bays were not limited to ten miles. It was clear from that decision that closing lines could be drawn to bays up to ten miles at least; it was possible that countries would draw longer lines, as the Court had not given a ruling that ten miles constituted a maximum.

The Commission adopted by 5 votes to 2, with 5 abstentions, the Special Rapporteur's proposal that the closing line of a bay should not exceed twenty-five miles in length.

88. Sir Gerald FITZMAURICE explained that he had abstained from voting on the 25-mile proposal, although

he believed that the correct maximum limit was 10 miles, because he felt that some limitation of a reasonable character was preferable to no limitation at all. If the figure proposed had been in the neighbourhood of 15 miles, he would have voted in favour of it.

89. Mr. SCELLE also preferred a shorter distance, such as 10 or 15 miles. He had abstained, however, from voting against the twenty-five-mile proposal because he felt that some limitation was absolutely indispensable.

90. Mr. GARCÍA AMADOR said he had voted against the proposal for a limit of 25 miles because it was contrary to the ruling given by the International Court of Justice in the Fisheries Case; the Court had stated that a closing line of more than 10 miles was not contrary to international law.

91. Moreover there was no juridical, social, economic or geographical argument in favour of a numerical limitation of the type adopted.

92. Mr. KRYLOV explained he had abstained from voting because although he believed in a distance limitation he considered that such limitation should be in terms of the breadth of the territorial sea.

93. He recalled that he had originally proposed that the whole subject be left over to the following session, and had only withdrawn his proposal because Mr. García Amador was hopeful of finding a solution to the problems involved.

94. The Commission's vote on the 25-mile rule had been adopted by such a narrow majority that it would have very little authority. The Commission had incurred the penalty of excessive zeal. Its 25-mile rule was not a part of international usage and its adoption by the Commission under the circumstances was of little significance.

95. Mr. ZOUREK said that the criterion of maximum length should not be regarded as the only one applicable. He had abstained from voting because the choice of 25-mile distance was purely arbitrary.

96. He reserved his final attitude for the vote on the article as a whole.

97. Mr. EDMONDS said that although he agreed that a maximum length must be laid down for the closing line of bays, he had voted against the proposal for a limitation to 25 miles because the figure seemed to him too high.

98. Mr. SALAMANCA said he had voted in favour of the proposal for a 25-mile limitation because he regarded that criterion as a provisional one which would be re-considered at the Commission's next session.

99. The 25-mile rule would be very useful because it would certainly elicit comments from governments. On the basis of those comments, the Commission could, at its next session, take a final decision.

100. The CHAIRMAN, speaking in his personal capacity, said he had abstained because he considered the

Commission was not in a position to decide on the maximum length of the closing line of bays any more than on that of the breadth of the territorial sea. Those questions could only be decided by an international conference of States.

Further discussion of article 7 was adjourned.

The meeting rose at 1.5 p.m.

319th MEETING

Friday, 24 June 1955, at 9.30 a.m.

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* The number within brackets indicates the article number in the draft contained in Chapter III of the Report of the Commission (A/2934).

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, 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 7 [7]: Bays (continued)

1. Mr. FRANÇOIS (Special Rapporteur) said that the Commission had to decide whether other criteria than the length of the closing line were to be incor-

porated in article 7. The only one that had been the subject of a proposal was the question of "historic" bays—the subject matter of paragraph 5 of his proposed text for the article (A/CN.4/93).

The principle of a reference to historic bays was adopted by 6 votes to none with 3 abstentions.

2. Mr. GARCÍA AMADOR asked for the actual text of paragraph 5 to be put to the vote.

3. In reply to a suggestion by Mr. SALAMANCA that a reference to estuaries be made in paragraph 5, Mr. FRANÇOIS (Special Rapporteur) said he wished to reserve the question until the Commission had dealt with article 14 on the delimitation of the territorial sea at the mouth of a river.

4. Mr. SALAMANCA agreed.

The text of article 7, paragraph 5, as contained in document A/CN.4/93, was adopted unanimously.

5. Mr. FRANÇOIS (Special Rapporteur), opening the discussion on paragraph 4, pointed out that the text must be brought into line with the Commission's decision to adopt a distance of 25 miles, instead of 10 miles, as the maximum length of closing lines.

6. Sir Gerald FITZMAURICE said paragraph 4 had been drawn up on the assumption that the closing line of a bay would in no case exceed 10 miles. On the basis of that assumption, it was quite proper to state that where different lines of such length could be drawn, that line should be chosen which enclosed the maximum water area within the bay.

7. Now that a distance of 25 miles had been substituted for that of 10 miles, it was doubtful whether the same argument applied. Indeed, it might even be suggested that, in order not to extend internal waters unduly, that line should be chosen which enclosed the minimum water area within the bay.

8. He would like to know the Special Rapporteur's views on the question.

9. Mr. FRANÇOIS (Special Rapporteur) said that as the Commission had adopted the 25-mile rule, it should apply it consistently and adopt paragraph 4 with a reference to the new distance. The matter was, however, not of any very great importance.

10. The CHAIRMAN called for a vote on article 7, paragraph 4, reading as follows:

"4. Where the entrance of a bay exceeds 25 miles, a closing line of such length shall be drawn within the bay. When different lines of such length can be drawn that line shall be chosen which encloses the maximum water area within the bay."

Article 7, paragraph 4 was adopted by 8 votes to none, with 4 abstentions.

11. Mr. FRANÇOIS (Special Rapporteur) drew attention to the second and third sentences of paragraph 2. The third sentence, which read: "Islands within a bay shall be included as if they were part of the water area