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# REPORT OF THE INTERNATIONAL LAW COMMISSION TO THE GENERAL ASSEMBLY

## DOCUMENT A/3159\*

**Report of the International Law Commission covering the work of its  
eighth session, 23 April—4 July 1956**

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### CHAPTER I

#### ORGANIZATION OF THE SESSION

1. The International Law Commission, established in pursuance of General Assembly resolution 174 (II) of 21 November 1947, and in accordance with the statute of the Commission annexed thereto, held its eighth session at the European Office of the United Nations, Geneva, Switzerland, from 23 April to 4 July 1956. The work of the Commission during the session is related in the present report. Chapter II of the report contains the Commission's final report on the law of the sea, as requested in General Assembly resolution 899 (IX), chapter III consists of progress reports on the work on the subjects of Law of treaties, State responsibility and Consular intercourse and immunities, while chapter IV deals with questions relating to the statute of the Commission and with administrative matters.

#### I. Membership and attendance

2. The Commission consists of the following members, which were all present at the session:

<i>Name</i>	<i>Nationality</i>
Mr. Gilberto Amado	Brazil
Mr. Douglas L. Edmonds	United States of America
Sir Gerald Fitzmaurice	United Kingdom of Great Britain and Northern Ireland
Mr. J. P. A. François	Netherlands
Mr. F. V. García Amador	Cuba
Mr. Shuhsi Hsu	China
Faris Bey el-Khoury	Syria
Mr. S. B. Krylov	Union of Soviet Socialist Republics
Mr. L. Padilla-Nervo	Mexico
Mr. Radhabinod Pal	India
Mr. Carlos Salamanca	Bolivia
Mr. A. E. F. Sandström	Sweden
Mr. Georges Scelle	France
Mr. Jean Spiropoulos	Greece
Mr. Jaroslav Zourek	Czechoslovakia

### II. Officers

3. At its meetings on 24 and 25 April 1956, the Commission elected the following officers:

*Chairman:* Mr. F. V. García Amador;

*First Vice-chairman:* Mr. Jaroslav Zourek;

*Second Vice-chairman:* Mr. Douglas L. Edmonds;

*Rapporteur:* Mr. J. P. A. François.

4. Mr. Yuen-li Liang, Director of the Codification Division of the Office of Legal Affairs, represented the Secretary-General and acted as Secretary of the Commission.

### III. Agenda

5. The Commission adopted an agenda for the eighth session consisting of the following items:

1. Régime of the high seas.
2. Régime of the territorial sea.
3. Law of treaties.
4. Diplomatic intercourse and immunities.
5. Consular intercourse and immunities.
6. State responsibility.
7. Arbitral procedure: General Assembly resolution 989 (X).
8. Question of amending article 11 of the statute of the Commission: General Assembly resolution 986 (X).
9. Publication of the documents of the Commission: General Assembly resolution 987 (X).
10. Co-operation with inter-American bodies.
11. Date and place of the ninth session.
12. Planning of future work of the Commission.
13. Other business.

6. In the course of the session, the Commission held fifty-one meetings. It considered all the items on the above

\* Also issued as *Official Records of the General Assembly, Eleventh Session, Supplement No. 9.*

in article 5, from straight baselines independent of the low-water mark. This is how the Commission interprets the judgement of the International Court of Justice rendered on 10 December 1951 in the Fisheries Case between the United Kingdom and Norway.<sup>11</sup>

(2) The traditional expression "low-water mark" may have different meanings; there is no uniform standard by which States in practice determine this line. The Commission considers that it is permissible to adopt as the base line the low-water mark as indicated on large-scale charts officially recognized by the coastal State. The Commission is of the opinion that the omission of detailed provisions such as were prepared by the 1930 Codification Conference is hardly likely to induce Governments to shift the low-water lines on their charts unreasonably.

### *Straight baselines*

#### ARTICLE 5

1. Where circumstances necessitate a special régime because the coast is deeply indented or cut into or because there are islands in its immediate vicinity, the baseline may be independent of the low-water mark. In these cases, the method of straight baselines joining appropriate points may be employed. The drawing of such baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the régime of internal waters. Account may nevertheless be taken, where necessary, of economic interests peculiar to a region, the reality and importance of which are clearly evidenced by a long usage. Baselines shall not be drawn to and from drying rocks and drying shoals.

2. The coastal State shall give due publicity to the straight baselines drawn by it.

3. Where the establishment of a straight baseline has the effect of enclosing as internal waters areas which previously had been considered as part of the territorial sea or of the high seas, a right of innocent passage, as defined in article 15, through those waters shall be recognized by the coastal State in all those cases where the waters have normally been used for international traffic.

### *Commentary*

(1) The International Court of Justice, in its decision regarding the Fisheries Case between the United Kingdom and Norway, considered that where the coast is deeply indented or cut into, or where it is bordered by an insular formation such as the Skjaergaard in Norway, the baseline becomes independent of the low-water mark and can only be determined by means of a geometric construction. The Court said:

"[In such circumstances the line of the low-water mark can no longer be put forward as a rule requiring the coastline to be followed in all its sinuosities. Nor can one characterize as exceptions to the rule the very many derogations which would be necessitated by such

a rugged coast; the rule would disappear under the exceptions. Such a coast, viewed as a whole, calls for the application of a different method; that is, the method of base-lines which, within reasonable limits, may depart from the physical line of the coast] . . .

"The principle that the belt of territorial waters must follow the general direction of the coast makes it possible to fix certain criteria valid for any delimitation of the territorial sea; these criteria will be elucidated later. The Court will confine itself at this stage to noting that, in order to apply this principle, several States have deemed it necessary to follow the straight baselines method and that they have not encountered objections of principle by other States. This method consists of selecting appropriate points on the low-water mark and drawing straight lines between them. This has been done, not only in the case of well-defined bays, but also in cases of minor curvatures of the coast line where it was solely a question of giving a simpler form to the belt of territorial waters."<sup>12</sup>

(2) The Commission interpreted the Court's judgement, which was delivered on the point in question by a majority of 10 votes to 2, as expressing the law in force; it accordingly drafted the article on the basis of this judgement. It felt, however, that certain rules advocated by the group of experts who met at The Hague in 1953 (see introduction to chapter II, paragraph 17 above) might serve to round off the criteria adopted by the Court. Consequently, at its sixth session, it inserted the following supplementary rules in paragraph 2 of the article:

"As a general rule, the maximum permissible length for a straight baseline shall be ten miles. Such baselines may be drawn, when justified according to paragraph 1, between headlands of the coastline or between any such headland and an island less than five miles from the coast, or between such islands. Longer straight baselines may, however, be drawn provided that no point on such lines is more than five miles from the coast. Baselines shall not be drawn to and from drying rocks and shoals."<sup>13</sup>

(3) Some Governments raised objections to this paragraph 2, arguing that the maximum length of ten miles for baselines and the maximum distance from the coast of five miles seemed arbitrary and, moreover, not in conformity with the Court's decision. Against this certain members of the Commission pointed out that the Commission had drafted these provisions for application "as a general rule" and that it would always be possible to depart from them if special circumstances justified doing so. In the opinion of those members, the criteria laid down by the Court was not sufficiently precise for

<sup>12</sup> *Ibid.*, pp. 129 and 130. The passage within brackets is a translation, provided by the Registry of the International Court of Justice, for the authoritative French text of the judgement; it is inserted here instead of the corresponding passage reproduced in the I.C.J. Reports 1951, which is somewhat distorted by printing errors.

<sup>13</sup> *Official Records of the General Assembly, Ninth Session, Supplement No. 9 (A/2693)*, p. 14.

<sup>11</sup> *International Court of Justice, Reports 1951*, p. 116.

general application. However, at its seventh session in 1955, after further study of the question the Commission decided, by a majority, that paragraph 2 should be deleted so as not to make the provisions of paragraph 1 too mechanical. Only the final sentence was kept and added to paragraph 1.

(4) At this same session, the Commission made a number of changes designed to bring the text even more closely into line with the Court's judgement in the above-mentioned Fisheries Case. In particular it inserted in the first sentence the words: "or where this is justified by economic interests peculiar to a region, the reality and importance of which are clearly evidenced by a long usage".<sup>14</sup> Some Governments stated in their comments on the 1955 text that they could not support the insertion of "economic interests" in the first sentence of the article. In their opinion, this reference to economic interests was based on a misinterpretation of the Court's judgement. The interests taken into account in the judgement were considered solely in the light of the historical and geographical factors involved and should not constitute a justification in themselves. The application of the straight baseline system should be justified in principle on other grounds before purely local economic considerations could justify a particular way of drawing the lines.

(5) Although this interpretation of the judgement was not supported by all the members, the great majority of the Commission endorsed this view at the eighth session, and the article was recast in that sense.

(6) The question arose whether in waters which become internal waters when the straight baseline system is applied the right of passage should not be granted in the same way as in the territorial sea. Stated in such general terms, this argument was not approved by the majority of the Commission. The Commission was, however, prepared to recognize that if a State wished to make a fresh delimitation of its territorial sea according to the straight baseline principle, thus including in its internal waters parts of the high seas or of the territorial sea that had previously been waters through which international traffic passed, other nations could not be deprived of the right of passage in those waters. Paragraph 3 of the article is designed to safeguard that right.

(7) Straight baselines may be drawn only between points situated on the territory of a single State. An agreement between two States under which such baselines were drawn along the coast and connecting points situated on the territories of different States, would not be enforceable against other States.

(8) Straight baselines may be drawn to islands situated in the immediate vicinity of the coast, but not to drying rocks and drying shoals. Only rocks or shoals permanently above sea level may be used for this purpose. Otherwise the distance between the baselines and the coast might be extended more than is required to fulfil the purpose for which the straight baseline method

is applied, and, in addition, it would not be possible at high tide to sight the points of departure of the baselines.

### *Outer limit of the territorial sea*

#### ARTICLE 6

The outer limit of the territorial sea is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea.

#### *Commentary*

(1) According to the committee of experts (see introduction to chapter II, paragraph 17 above), this method of determining the outer limit has already been in use for a long time. In the case of deeply indented coasts the line it gives departs from the line which follows the sinuosities of the coast. It is undeniable that the latter line would often be so tortuous as to be unusable for purposes of navigation.

(2) The line all the points of which are at a distance of T miles from the nearest point on the coast (T being the breadth of the territorial sea) may be obtained by means of a continuous series of arcs of circles drawn with a radius of T miles from all points on the coast line. The outer limit of the territorial sea is formed by the most seaward arcs. In the case of a rugged coast, this line, although undulating, will be less of a zigzag than if it followed all the sinuosities of the coast, because circles drawn from those points on the coast where it is most deeply indented will not usually affect the outer limit of the seaward arcs. In the case of a straight coast, or if the straight baseline method is followed, the arcs of circles method produces the same result as the strictly parallel line.

(3) The Commission considers that the arcs of circles method is to be recommended because it is likely to facilitate navigation. In any case, the Commission feels that States should be free to use this method without running the risk of being charged with a breach of international law on the ground that the line does not follow all the sinuosities of the coast.

#### *Bays*

#### ARTICLE 7

1. For the purposes of these articles, a bay is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to certain land-locked waters and constitute more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of the semi-circle drawn on the mouth of that indentation. If a bay has more than one mouth, this semi-circle shall be drawn on a line as long as the sum total of the length of the different mouths. Islands within a bay shall be included as if they were part of the water area of the bay.

2. The waters within a bay, the coasts of which belong to a single State, shall be considered internal waters if the line drawn across the mouth does not exceed fifteen miles measured from the low-water line.

<sup>14</sup> *Official Records of the General Assembly, Tenth Session, Supplement No. 9 (A/2934)*, p. 17.

3. Where the mouth of a bay exceeds fifteen 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.

4. The foregoing provisions shall not apply to so-called "historic" bays, or in any cases where the straight baseline system provided for in article 5 is applied.

#### *Commentary*

(1) Paragraph 1, which is taken from the report of the committee of experts mentioned above, lays down the conditions that must be satisfied by an indentation or curve in order to be regarded as a bay. In adopting this provision, the Commission repaired the omission to which attention had already been drawn by The Hague Codification Conference of 1930 and which the International Court of Justice again pointed out in its judgement in the Fisheries Case. Such an explanation was necessary in order to prevent the system of straight baselines from being applied to coasts whose configuration does not justify it, on the pretext of applying the rules for bays.

(2) If, as a result of the presence of islands, an indentation whose features as a "bay" have to be established has more than one mouth, the total length of the lines drawn across all the different mouths will be regarded as the width of the bay. Here, the Commission's intention was to indicate that the presence of islands at the mouth of an indentation tends to link it more closely to the mainland, and this consideration may justify some alteration in the ratio between the width and the penetration of the indentation. In such a case an indentation which, if it had no islands at its mouth, would not fulfil the necessary conditions, is to be recognized as a bay. Nevertheless, islands at the mouth of a bay cannot be considered as "closing" the bay if the ordinary sea route passes between them and the coast.

(3) The Commission discussed at length the question of the conditions under which the waters of a bay can be regarded as internal waters. The majority considered that it was not sufficient to lay down that the waters must be closely linked to the land domain by reason of the depth of penetration of the bay into the mainland, or otherwise by its configuration, or by reason of the utility the bay might have from the point of view of the economic needs of the country. These criteria lack legal precision.

(4) The majority of the Commission took the view that the maximum length of the closing line must be stated in figures and that a limitation based on geographical or other considerations, which would necessarily be vague, would not suffice. It considered, however, that the limit should be more than ten miles. Although not prepared to establish a direct relationship between the length of the closing line and the breadth of the territorial sea—such a relationship was formally denied by certain members of the Commission—it felt bound to take some account of tendencies to extend the breadth of the territorial sea by lengthening the closing line of bays. As an experiment the Commission suggested,

at its seventh session, a distance of twenty-five miles; thus, the length of the closing line would be slightly more than twice the permissible maximum breadth of the territorial sea as laid down in paragraph 2 of article 3. Since, firstly, historic bays, some of which are wider than twenty-five miles, would not come under the article and since, secondly, the provision contained in paragraph 1 of the article concerning the characteristics of a bay was calculated to prevent abuse, it seemed not unlikely that some extension of the closing line would be more readily accepted than an extension of the breadth of the territorial sea in general. At the seventh session, the majority of the Commission rejected a proposal that the length of the closing line should be set at twice the breadth of the territorial sea, primarily because it considered such a delimitation unacceptable to States that have adopted a breadth of three or four miles for their territorial sea. At its eighth session the Commission again examined this question in the light of replies from Governments. The proposal to extend the closing line to twenty-five miles had found little support; a number of Governments stated that, in their view, such an extension was excessive. By a majority, the Commission decided to reduce the twenty-five miles figure, proposed in 1955, to fifteen miles. While appreciating that a line of ten miles had been recognized by several Governments and established by international conventions, the Commission took account of the fact that the origin of the ten-mile line dates back to a time when the breadth of the territorial sea was much more commonly fixed at three miles than it is now. In view of the tendency to increase the breadth of the territorial sea, the majority in the Commission thought that an extension of the closing line to fifteen miles would be justified and sufficient.

(5) If the mouth of a bay is more than fifteen miles wide, the closing line will be drawn within the bay at the point nearest to the sea where the width does not exceed that distance. Where more than one line of fifteen miles in length can be drawn, the closing line will be so selected as to enclose the maximum water area within the bay. The Commission believes that other methods proposed for drawing this line will give rise to uncertainties that will be avoided by adopting the above method, which is that proposed by the above-mentioned committee of experts.

(6) Paragraph 4 states that the foregoing provisions shall not apply to "historic" bays.

(7) The Commission felt bound to propose only rules applicable to bays the coasts of which belong to a single State. As regards other bays, the Commission has not sufficient data at its disposal concerning the number of cases involved or the regulations at present applicable to them.

#### *Ports*

#### ARTICLE 8

For the purpose of delimiting the territorial sea, the outermost permanent harbour works which form an integral part of the harbour system shall be regarded as forming part of the coast.