A/CONF.19/8

Second United Nations Conference on the Law of the Sea

Official records

Summary Records of Plenary Meetings and of Meetings of the Committee of the Whole

Annexes and Final Act

GENEVA

17 March — 26 April 1960

Second United Nations Conference on the Law of the Sea

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UNITED NATIONS PUBLICATION

Sales No.: 60. V. 6

Price: $(U.S.) 2.50 ; 17/6 stg.; Sw. fr. 10.50
(or equivalent in other currencies)

INTRODUCTORY NOTE

The *Official Records of the Second United Nations Conference on the Law of the Sea* comprise the summary records of the plenary meetings of the Conference and of the meetings of the Committee of the Whole, relevant documents published as annexes, as well as a list of the delegations which participated, the agenda and the rules of procedure of the Conference.

The present volume contains an index in which all the documents relating to the work of the Conference are listed with an indication where they may be found.

The *Official Records of the United Nations Conference on the Law of the Sea*, volumes I to VII, contain indexes to the documents relating to the work of the first United Nations Conference on the Law of the Sea.

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

* * *

The summary records of the plenary meetings of the Conference and of the meetings of the Committee of the Whole contained in this volume were originally distributed in mimeographed form as documents A/CONF.19/SR.1 to 14 and A/CONF.19/C.1/SR.1 to 28. They include the corrections to the provisional summary records that were requested by the delegations and such drafting and editorial modifications as were considered necessary.

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RESOLUTION 1307 (XIII) OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS CONVENING THE CONFERENCE

Convening of a second United Nations conference on the law of the sea

The General Assembly,

Having received the resolution adopted on 27 April 1958 by the United Nations Conference on the Law of the Sea,[1] requesting the General Assembly to study at its thirteenth session the advisability of convening a second international conference of plenipotentiaries for further consideration of questions left unsettled by the Conference,

Recalling that the Conference made an historic contribution to the codification and progressive development of international law by preparing and opening for signature conventions on nearly all of the subjects covered by the draft articles on the law of the sea drawn up by the International Law Commission,[2]

Noting that no proposal concerning the breadth of the territorial sea or fishery limits received the two-thirds majority required for adoption by the Conference,

Believing that the desire for agreement on these two vital issues continues, and that agreement thereon would contribute substantially to the lessening of international tensions and to the preservation of world order and peace,

Convinced that to reach such agreement it is necessary to undertake considerable preparatory work so as to ensure reasonable probabilities of success,

1. *Decides* that a second international conference of plenipotentiaries on the law of the sea should be called for the purpose of considering further the questions of the breadth of the territorial sea and fishery limits;

2. *Requests* the Secretary-General to convoke the conference at the earliest convenient date in March or April 1960 at the European Office of the United Nations in Geneva;

3. *Invites* all States Members of the United Nations and States members of the specialized agencies to participate in the conference and to include among their representatives experts competent in the matters to be considered;

4. *Requests* the Secretary-General to invite the specialized agencies and inter-governmental bodies concerned with the matters to be considered to send observers to the conference;

5. *Requests* the Secretary-General to arrange for the necessary staff and facilities which would be required for the conference, and to present to the conference recommendations concerning its methods of work and procedures, and other questions of an administrative nature;

6. *Refers* to the conference for its information the relevant records of the United Nations Conference on the Law of the Sea held in 1958.

783rd plenary meeting,
10 December 1958.

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[1] *Official Records of the United Nations Conference on the Law of the Sea*, vol. II, annexes, document A/CONF.13/L.56, resolution VIII.

[2] *Official Records of the General Assembly, Eleventh Session, Supplement No. 9*, pp. 4 ff.

LIST OF DELEGATIONS

Albania

Representatives:

H.E. Mr. Dhimitri Lamani, Envoy Extraordinary and Minister Plenipotentiary to France *(Chairman of the Delegation)*;

Mr. Andrea Nathanaili, Head of Department, Ministry of Justice.

Argentina

Representatives:

H.E. Dr. Luis María de Pablo Pardo, Ambassador Extraordinary and Plenipotentiary; Legal Adviser, Ministry of External Relations *(Chairman of the Delegation)*;

H.E. Dr. Mario Raúl Pico, Envoy Extraordinary and Minister Plenipotentiary, Permanent Representative to the European Office of the United Nations and international organizations;

Lt. Commander Carlos A. Ledesma, Head of the Political Division, Secretariat of Marine.

Alternate Representatives:

Dr. Julio César Carasales, First Secretary, Permanent Mission, European Office of the United Nations and international organizations;

Dr. Juan Carlos Beltramino, First Secretary, Legal Adviser, Ministry of External Relations;

Dr. Ernesto de la Guardia, First Secretary, Legal Adviser, Ministry of External Relations.

Adviser:

H.E. Dr. César Diaz Cisneros, Ambassador Extraordinary and Plenipotentiary; Director, Department of Territorial Sovereignty, Ministry of External Relations.

Australia

Representatives:

Sir Kenneth H. Bailey, C.B.E., Solicitor-General of the Commonwealth of Australia *(Chairman of the Delegation)*;

Mr. James Plimsoll, C.B.E., Permanent Representative to the United Nations, New York.

Adviser:

Mr. P. G. F. Henderson, Permanent Mission, European Office of the United Nations.

Austria

Representatives:

Mr. Rudolf Kirchschläger, Head of the Department of International Law, Ministry of Foreign Affairs *(Chairman of the Delegation)*;

Mr. Heinz Laube, Counsellor, Ministry of Foreign Affairs.

Alternate Representative:

Mr. Erich M. Schmid, Assistant Permanent Representative to the European Office of the United Nations.

Belgium

Representatives:

H.E. Mr. Joseph Nisot, Ambassador Extraordinary and Plenipotentiary; Legal Adviser, Permanent Mission, European Office of the United Nations *(Chairman of the Delegation)*;

Mr. Alfred van der Essen, Director, Ministry of Foreign Affairs and External Trade;

Mr. Charles Michielsen, Assistant Counsellor, Department of Fisheries, Ministry of Agriculture;

Mr. Maurice Bourquin, Honorary Professor, University of Geneva;

Mr. Francis de la Barre d'Erquelinnes, Deputy Permanent Representative to the European Office of the United Nations.

Bolivia

Representative:

H.E. Mr. José Cuadros Quiroga, Ambassador to France.

Brazil

Representative:

H.E. Mr. Gilberto Amado, Ambassador Extraordinary and Plenipotentiary *(Chairman of the Delegation)*.

Advisers:

Mr. M. Victor Russomanó, Director, Institute of Sociology and Political Affairs, University of Rio Grande do Sul;

Mr. Egberto da Silva Mafra, First Secretary of Embassy, Paris;

Lt. Commander José Lisboa Freire, Hydrography and Navigation Directorate, Naval Ministry;

Mr. David Silveira da Mota, Second Secretary, Ministry of Foreign Affairs;

Mr. Ronald Leslie Moraes Small, Second Secretary, Permanent Mission, European Office of the United Nations.

Bulgaria

Representatives:

Mr. Lubomir Radouilsky, Professor, Faculty of Law, University of Sofia *(Chairman of the Delegation)*;

Mr. Yordan Golemanov, Secretary of Legation, Ministry of Foreign Affairs.

Burma

Representatives:

H.E. U Mya Sein, Minister in Kuala Lumpur *(Chairman of the Delegation)*;

U Chit, Assistant Attorney General;

Lt. Commander Chit Hlaing, War Office.

Secretary:

U Toe Lon, Assistant Chief of Division, Foreign Office.

Byelorussian Soviet Socialist Republic

Representative:

Mr. Gavriil A. Povetiev, State University, Minsk *(Chairman of the Delegation)*;

Adviser:

M. Anatoli N. Sheldov, Second Secretary.

Cambodia

Representatives:

Mr. Chhat Phlek, Minister of Public Works and Telecommunications *(Chairman of the Delegation)*;

Mr. Ing Judeth, Head of Conference Services, Ministry of Foreign Affairs.

Secretary:

Mr. Heng Soc Koun.

Cameroun

Representative:

Mr. Rivayran, Civil Administrator, Merchant Marine *(Chairman of the Delegation)*.

Alternate Representative:

Mme. de Hartingh, Doctor of Law.

Canada

Representatives:

H.E. The Hon. George A. Drew, P.C., Q.C., High Commissioner for Canada in the United Kingdom *(Chairman of the Delegation)*;

Mr. M. H. Wershof, Q.C., Ambassador; Permanent Representative to the European Office of the United Nations *(Vice-Chairman of the Delegation)*;

Mr. Marcel Cadieux, Legal Adviser and Assistant Under-Secretary of State for External Affairs *(Vice-Chairman of the Delegation)*;

Mr. S. V. Ozere, Assistant Deputy Minister of Fisheries *(Vice-Chairman of the Delegation)*;

Mr. G. F. Curtis, Q.C., Dean of the Faculty of Law, University of British Colombia.

Advisers:

Mr. E. B. Rogers, Ambassador Extraordinary and Plenipotentiary to Turkey;

Mr. J. E. C. Hardy, Counsellor, London;

Mr. J. E. Thibault, First Secretary, Embassy, Belgrade;

Mr. Pierre Dumas, First Secretary, Permanent Mission, European Office of the United Nations;

Mr. A. E. Gotlieb, Second Secretary, Permanent Mission, European Office of the United Nations;

Lt. Commander E. M. Jones, Department of National Defence;

Mr. E. B. Wang, Third Secretary, Embassy, Oslo.

Secretary:

Mr. M. W. Cunningham, Privy Council Office, Ottawa.

Ceylon

Representatives:

H.E. Sir Claude Corea, K.B.E., Ambassador Extraordinary and Plenipotentiary; Permanent Representative to the United Nations, New York *(Chairman of the Delegation)*;

Mr. D. T. E. A. de Fonseka, Director of Fisheries;

Mr. N. T. D. Kanakaratne, First Secretary, Legal Affairs, Permanent Mission, United Nations, New York;

Mr. W. S. L. de Alwis, Assistant Secretary, Ministry of Defence and External Affairs.

Chile

Representatives:

H.E. Mr. Luis Melo Lecaros, Ambassador *(Chairman of the Delegation)*;

Mr. Fausto Soto Troncoso, Minister, Permanent Representative to the European Office of the United Nations.

Adviser:

Mr. Miguel Rioseco, Counsellor of Embassy, Berne.

Secretary:

Mr. Carlos Franz, Secretary, Permanent Mission, European Office of the United Nations.

China

Representatives:

H.E. Mr. Liu Chieh, Ambassador Extraordinary and Plenipotentiary to Canada *(Chairman of the Delegation)*;

H.E. Dr. Wang Hua-Cheng, Envoy Extraordinary and Minister Plenipotentiary to Portugal.

Adviser:

Mr. Wang Meng-Hsien, First Secretary, Permanent Mission, United Nations, New York.

Colombia

Representatives:

H.E. Mr. Raimundo Emiliani, Ambassador Extraordinary and Plenipotentiary to Switzerland *(Chairman of the Delegation)*;

Dr. Alvaro García Herrera, Envoy Extraordinary and Minister Plenipotentiary to Denmark;

Dr. Jaime Canal, First Secretary of Embassy, London;

Captain Luis M. Riveira, Naval Attaché, Washington, D.C.

Costa Rica

Representatives:

Dr. Gonzalo Ortiz Martín, Ambassador, Permanent Representative to the United Nations, New York *(Chairman of the Delegation)*;

Mr. Aristide Donnadieu, Consul General, Geneva;

Dr. Carlos Elizondo.

Cuba

Representatives:

H.E. Dr. Francisco V. García Amador, Ambassador; Special Adviser, Ministry of Foreign Relations *(Chairman of the Delegation)*;

H.E. Dr. Andrés Vargas Gómez, Ambassador; Permanent Representative to the European Office of the United Nations;

Dr. Luis Howell Rivero, Director of the Naval Hydrographic Office;

Dr. Armando Pardillo, Professor of International Maritime Law, Naval Academy, Mariel.

Czechoslovakia

Representatives:

Dr. Vratislav Pěchota, Envoy Extraordinary and Minister Plenipotentiary *(Chairman of the Delegation)*;

Dr. Marta Velíšková, Second Secretary of Embassy, Ministry of Foreign Affairs;

Dr. Ilja Hulínský, Attaché, Permanent Mission, European Office of the United Nations.

Secretary:

Mrs. Dagmar Karlová, Ministry of Foreign Affairs.

Denmark

Representatives:

Dr. Max Sörensen, Professor of Law, University of Aarhus; Adviser on matters of international law, Ministry of Foreign Affairs *(Chairman of the Delegation)*;

Mr. Janus August Worm Paludan, Chief of Department, Ministry of Foreign Affairs;

Mr. Troels Valdemar Andreas Oldenburg, Counsellor, Ministry of Foreign Affairs;

Mr. Bengt Sophus Dinesen, Secretary General, Ministry of Fisheries;

Mr. Niels Otto Christensen, Chief of Division, Ministry of Greenland;

Mr. Daniel Johannes Nolsoe, Judge, Court of First Instance;

Mr. Johan Frits Djurhuus, Chief of Division, Secretariat of the Lagting and of the local Government of the Faroe Islands.

Alternate Representative:

Mr. Torben Erling Jantzen, Secretary of Embassy; Permanent Mission, European Office of the United Nations.

Advisers:

Dr. Erik Bertelsen, Doctor of Science; Director, Danish Institute for the Exploration of the Sea;

Mr. Frederik Lodberg Jensen, Chairman, West Jutland Fishing Association;

Mr. Niels Bjerregaard, Chairman, Danish Fishing Association;

Mr. Adolf Jörgensen, Vice-Chairman, Danish Fishing Association;

Mr. Jakon Johansen, Representative of the Faroes Shipowners' Association;

Mr. Erlendur Patursson, Chairman, Fishing Association of the Faroe Islands.

Dominican Republic

Representative:

Dr. Salvador E. Paradas, Permanent Representative to the European Office of the United Nations.

Ecuador

Representatives:

H.E. Dr. José Vicente Trujillo, Ambassador Extraordinary and Plenipotentiary; Permanent Representative to the European Office of the United Nations *(Chairman of the Delegation)*;

H.E. Dr. Enrique Ponce y Carbo, Ambassador Extraordinary and Plenipotentiary, Under-Secretary for External Relations;

H.E. Dr. José Antonio Correa, Ambassador Extraordinary and Plenipotentiary, Permanent Representative to the United Nations, New York.

Secretary:

Miss María-Rosa Sánchez.

El Salvador

Representatives:

H.E. Dr. Alfredo Martínez Moreno, Under-Secretary for External Relations *(Chairman of the Delegation)*;

Dr. Amilcar Martínez Arguera, Economic Adviser to Embassy, Bonn;

Dr. Alberto Amy, Consul-General, Geneva.

Ethiopia

Representatives:

H.E. Ato Goytom Petros, Ambassador Extraordinary and Plenipotentiary to Ghana *(Chairman of the Delegation)*;

Ato Getachew Bekele, Assistant Minister, Department of Marine, Ministry of National Defence;

Ato Seyoum Haregot, Director-General, Prime Minister's Office.

Finland

Representative:

H.E. Mr. Osmo Orkomies, Ambassador Extraordinary and Plenipotentiary to Switzerland *(Chairman of the Delegation)*;

Alternate Representative:

Mr. Erik Castren, Professor of International Law, University of Helsinki.

Adviser:

Mr. Aarno Karhilo, Chief of Bureau, Ministry of Foreign Affairs.

France

Representatives:

Mr. André Gros, Professor, Faculty of Law; Counsellor of State on special assignment; Legal Adviser, Ministry of Foreign Affairs *(Chairman of the Delegation)*;

Mr. Alloy, Director of Fisheries, Department of the Mercantile Marine;

Mr. Ruedel, Director, Ministry of Marine.

Alternate Representatives:

Mr. Deleau, Counsellor of Embassy, Ministry of Foreign Affairs;

Mr. Patey, Assistant Legal Counsellor, Ministry of Foreign Affairs.

Advisers:

Mr. de Curton, Permanent Representative to the European Office of the United Nations;

Mr. Covillaut, Chief Engineer-Hydrographer;

Lt. Commander Dyevre;

Lt. Commander Lafeuille, Navy Headquarters;

Mr. Texier, Commissaire de la Marine, Navy Headquarters.

Technical Experts:

Mr. Jean S. Parquic, President, Central Fisheries Committee;

Mr. Legasse, President, Committee of Deep-Sea Fishing Trades; President, Federation of Associations of Owners of Deep-Sea Fishing Vessels;

Mr. Soublin, President, Federation of Associations of Owners of Fishing Vessels;

Mr. Maurice P. J. Pouliot, Secretary-General, Confederation of Associations of Owners of Fishing Vessels.

Secretary:

Miss Garito.

Germany (Federal Republic of)

Representatives:

H.E. Mr. Peter H. Pfeiffer, Ambassador Extraordinary and Plenipotentiary *(Chairman of the Delegation)*;

Dr. Gerhard Meseck, Assistant Director, Head of Fisheries Division, Ministry of Food, Agriculture and Forestry;

Dr. Hermann Meyer-Lindenberg, Foreign Affairs Adviser, Legal Division, Ministry of Foreign Affairs;

Dr. Fritz Muench, Professor of International Law, Max-Planck Institute, Berlin;

Dr. Gerhard Breuer, Oberregierungsrat, Ministry of Transport and Communications;

Dr. Johannes Graf Welczeck, Counsellor, Ministry of Foreign Affairs;

Dr. Heinz Knackstedt, Regierungsrat, Ministry of Defence.

Alternate Representative:

Mr. Gero Moecklinghoff, Regierungsassessor, Ministry of Food, Agriculture and Forestry.

Secretary:

Mr. Otto von der Gablentz, Attaché, Ministry of Foreign Affairs.

Ghana

Representatives:

Mr. E. O. Asafu-Adjaye, High Commissioner for Ghana in the United Kingdom *(Chairman of the Delegation)*;

Mr. R. A. Quarshie, Principal Assistant Secretary, Ministry of Foreign Affairs *(Vice-Chairman of the Delegation)*;

Mr. H. R. Amonoo, Permanent Representative to the United Nations and specialized agencies, Geneva;

Mr. K. A. Bentsi-Enchill, Senior Lecturer, Ghana School of Law;

Mr. E. K. Dadzie, Assistant Secretary, Legal Division, Ministry of Foreign Affairs;

Mr. Reginald Simmonds.

Greece

Representatives:

Mr. A. Vlachos, Permanent Representative to the European Office of the United Nations *(Chairman of the Delegation)*;

Mr. Elias Krispis, Professor, University of Athens *(Vice-Chairman of the Delegation)*;

Captain C. Catevenis;

Mr. Christos Serbetis, Director, Department of Fisheries, Ministry of Industry;

Commander E. Georgantopoulos, Ministry of the Mercantile Marine.

Adviser:

Mr. A. V. Papacostas, Doctor of Law.

Secretary:

Mr. P. Economou, Permanent Mission, European Office of the United Nations.

Guatemala

Representatives:

Mr. Gilberto Chacón Pazos, Director, Legal Affairs Department, Ministry of External Affairs *(Chairman of the Delegation)*;

Mr. José Luis Mendoza, Director, International Organizations Division, Ministry of External Affairs;

Mr. Alberto Dupont-Willemin, Consul-General, Geneva; Permanent Representative to the European Office of the United Nations and to the International Labour Organisation.

Guinea

Representatives:

Mr. Abdourahmane Diallo, Minister of State *(Chairman of the Delegation)*;

Mr. Alpha Abdoulaye Diallo, Mission *Chargé*, Ministry of Foreign Affairs.

Haiti

Representatives:

Mr. Narses D. Day, Counsellor, Audit Office *(Chairman of the Delegation)*;

Mr. Estimé Rameau, President, Chamber of Deputies.

Holy See

Representatives:

Mr. Paul Demeur, Professor, Catholic University, Louvain;

The Reverend Father Henri de Riedmatten.

Honduras

Representatives:

H.E. Mr. Francisco Milla Bermúdez, Ambassador Extraordinary and Plenipotentiary, Permanent Permanent Representative to the United Nations, New York *(Chairman of the Delegation)*;

Mr. Miguel Paz Paredes, Envoy Extraordinary and Minister Plenipotentiary, Permanent Mission, United Nations, New York;

Mr. Herbert van Leisen, Consul, Geneva.

Hungary

Representatives:

Dr. Endre Ustor, Consul-General, Head of the Department of International Law and Consular Affairs, Ministry of Foreign Affairs *(Chairman of the Delegation)*;

Mr. József Varga-Perke, Second Counsellor, Permanent Mission, European Office of the United Nations.

Iceland

Representatives:

H.E. Mr. Gudmundur i Gudmundsson, Minister for Foreign Affairs *(Chairman of the Delegation)*;

H.E. Mr. Bjarni Benediktsson, Minister of Justice *(Vice-Chairman of the Delegation)*;

H.E. Mr. Hans G. Andersen,[1] Ambassador;

Mr. David Olafsson, Director of Fisheries;

H.E. Dr. Helgi P. Briem, Ambassador Extraordinary and Plenipotentiary, Berne;

Mr. Henrik Sv. Bjornsson, Secretary General, Ministry of Foreign Affairs;

Mr. Herman Jonasson, Member of Parliament, former Prime Minister;

Mr. Jon Jonsson, Director of Fisheries Research;

Mr. Ludvik Josepsson, Member of Parliament, former Minister of Fisheries.

India

Representatives:

H.E. Shri A. K. Sen, Minister for Law *(Chairman of the Delegation)*;

Shri K. Raghu Ramaiah, Deputy Minister for Defence;

Dr. Nagendra Singh, Director-General of Shipping, Ministry of Transport and Communications.

Alternate Representatives:

Dr. N. K. Pannikar, Fisheries Development Adviser, Ministry of Food and Agriculture;

Shri K. S. Bajpai, Under-Secretary, Ministry of External Affairs *(Secretary-General of the Delegation)*.

Indonesia

Representatives:

H.E. Mr. Ahmad Subardjo Djoyoadisuryo, Ambassador Extraordinary and Plenipotentiary to Switzerland *(Chairman of the Delegation)*;

Mr. Mochtar Koesoemaatmadja, Lecturer, University of Padjadjaran;

Mr. S. H. Tajibnapis, Deputy Chief, Directorate of Legal Affairs, Department of Foreign Affairs;

Mr. Gusti Muhammad Charidjie Kasuma, Deputy Chief, Central Sea-Fisheries Department, Ministry of Agriculture;

Mr. F. W. M. Tiwon, Chief, Consular Bureau, Department of Foreign Affairs.

Adviser:

Commander Sardjoeno, Naval Attaché, London.

Secretary:

Mr. A. Hadi, Second Secretary of Embassy, Berne.

[1] Chairman of the Delegation in the absence of Mr. Gudmundur i Gudmundsson and Mr. Benediktsson.

Iran

Representatives:

H.E. Dr. Ahmad Matine-Daftary, Senator; former Prime Minister; Professor of Law, University of Teheran *(Chairman of the Delegation)*;

Colonel Abdol-Hossein Vahabi, Military, Naval and Air Attaché, Rome;

Dr. Gholamréza Tadjbakhche, Legal Adviser, Attaché to the Prime Minister's Office;

Dr. Hossein Davoudi, Permanent Mission, United Nations, New York.

Advisers:

Dr. Mohammed Ali Hekmatt, Professor, University of Teheran;

Dr. Manoochehr Ganji, Permanent Mission, European Office of the United Nations.

Iraq

Representatives:

Dr. Mustafa Kamil Yasseen, Director General, Political Department, Ministry of Foreign Affairs *(Chairman of the Delegation)*.

Adviser:

Mrs. H. Bedia Afnan, Adviser, Permanent Mission, European Office of the United Nations.

Secretary:

Mr. Ghanim Faris, Chancellor of the Consulate, Geneva.

Ireland

Representatives:

Mr. Aindreas O'Keeffe, Attorney-General *(Chairman of the Delegation)*;

Mr. Séan Morrissey, Legal Adviser, Department of External Affairs;

Mr. Séamus Mallin, Inspector and Engineer, Fisheries Division, Department of Lands.

Israel

Representatives:

H.E. Mr. Gideon Rafael, Ambassador Extraordinary and Plenipotentiary; Deputy Director-General, Ministry of Foreign Affairs *(Chairman of the Delegation)*;

H.E. Mr. Shabtai Rosenne, Ambassador Extraordinary and Plenipotentiary; Legal Adviser, Minister of Foreign Affairs *(Vice-Chairman of the Delegation)*;

Mr. Avraham Darom, Envoy Extraordinary and Minister Plenipotentiary, Minister to Yugoslavia;

Dr. Menahem Kahany, Envoy Extraordinary and Minister Plenipotentiary, Permanent Representative to the European Office of the United Nations;

Dr. Eytan Strausz, Deputy Legal Adviser, Ministry of Transport and Communications.

Adviser:

Mr. Nissim Yaish, First Secretary, Alternate Representative to the European Office of the United Nations.

Italy

Representatives:

H.E. Mr. Francesco Mameli, Ambassador, Vice-President of the Council for Diplomatic Claims *(Chairman of the Delegation)*;

Dr. Roberto Ago, Professor, University of Rome *(Vice-Chairman of the Delegation)*;

Dr. Riccardo Monaco, Head of the Legal Department, Ministry of Foreign Affairs; Professor, University of Rome *(Vice-Chairman of the Delegation)*;

Dr. Raffaele Cusmai, Inspector-General, Ministry of the Mercantile Marine;

Dr. Vincenzo Vitelli, Inspector-General, Ministry of the Mercantile Marine;

Colonel Anselmo Gabrielli, Treaty Office, Cabinet of the Secretary of State, Ministry of Defence.

Alternate Representatives:

Dr. Adolfo Maresca, Counsellor of Embassy, Ministry of Foreign Affairs;

Dr. Angelo Franchi, Counsellor, Ministry of the Mercantile Marine;

Dr. Sergio Paroletti, Counsellor, Ministry of the Mercantile Marine.

Adviser:

Dr. Mario Scerni, Professor, University of Genoa.

Secretary:

Mr. Maurizio Battaglini, Attaché, Ministry of Foreign Affairs.

Japan

Representatives:

H.E. Mr. Katsuzo Okumura, Ambassador Extraordinary and Plenipotentiary to Switzerland *(Chairman of the Delegation)*;

Mr. Kenjiro Nishimura, Director, Fisheries Agency;

Mr. Yasulhiko Takashi, Deputy Director, Fisheries Agency.

Advisers:

Dr. Kisaburo Yokota, Legal Adviser to the Minister for Foreign Affairs;

Mr. Isamu Wada, Deputy Director, Maritime Safety Agency;

Mr. Shoji Sato, Counsellor, Permanent Mission to international organizations, Geneva;

Mr. Motoo Ogiso, Chief, Legal Section, Treaties Bureau, Ministry of Foreign Affairs *(Secretary of the Delegation)*;

Dr. Shigeru Oda, Professor of Law, Tohoku University;

Mr. Hisashi Owada, Secretary, Legal Section, Treaties Bureau, Ministry of Foreign Affairs;

Mr. Kazutoshi Hasegawa, Attaché, Permanent Mission to international organizations, Geneva.

Jordan

Representative:

Mr. Shukry Muhtadi, Legal Adviser to the Prime Minister.

Korea (Republic of)

Representatives:

H.E. Mr. Won Yil Sohn, Ambassador Extraordinary and Plenipotentiary to the Federal Republic of Germany *(Chairman of the Delegation)*;

H.E. Mr. Yong Shik Kim, Minister Extraordinary and Plenipotentiary, Permanent Observer at the European Office of the United Nations;

H.E. Mr. Pyo Wook Han, Minister Extraordinary and Plenipotentiary to the United States of America.

Alternate Representatives:

Mr. Won Suk Jo, Counsellor, Office of the Permanent Observer at the European Office of the United Nations;

Mr. Kyu Young Hahn, First Secretary of Embassy, Paris.

Secretary:

Mr. Jung Tai Kim, Second Secretary, Treaty Section, Ministry of Foreign Affairs.

Laos

Representative:

Mr. Platthana Chounramany, Counsellor of Embassy, Paris.

Lebanon

Representative:

Dr. Antoine Fattal, Director, Civil Service Commission; Professor, Faculty of Law, Beyrouth.

Liberia

Representatives:

H.E. Mr. Nathan Barnes, Ambassador to Italy *(Chairman of the Delegation)*;

Mr. James Dossen Richards, Assistant Attorney-General.

Adviser:

Mr. Edgar T. Kongsberg, Liberian Services Agent.

Libya

Representatives:

Mr. Fuad Caabasi, Permanent Under-Secretary, Ministry of Communications *(Chairman of the Delegation)*;

Mr. Hameda Zlitni, Head of Department, Ministry of Foreign Affairs.

Luxembourg

Representative:

Mr. Ignace Bessling, Permanent Representative to the European Office of the United Nations and to the International Labour Organisation.

Malaya (Federation of)

Representatives:

Mr. Mohamed Suffian bin Hashim, Solicitor-General *(Chairman of the Delegation)*;

Mr. Abdul Aziz bin Yeop, Secretary to the Ministry of Agriculture and Co-operatives;

Secretary:

Mr. Peter Stephen Lai, Second Secretary of Embassy, Paris.

Mexico

Representatives:

H.E. Dr. Alfonso García Robles, Ambassador Extraordinary and Plenipotentiary *(Chairman of the Delegation)*;

Dr. Jorge Castañeda, Envoy Extraordinary and Minister Plenipotentiary.

Advisers:

Dr. Francisco J. Alvarez Faller;

Dr. José S. Gallastegui;

Dr. María Emilia Tellez Benoit.

Secretaries:

Dr. Roberto de Rosenzweig-Díaz;

Mr. Juan Rondera.

Monaco

Representatives:

H.E. M. César Charles Solamito, Minister Plenipotentiary *(Chairman of the Delegation)*;

H.E. M. Henry Soum, Minister in Berne *(Vice-Chairman of the Delegation)*;

Mr. Paul de la Pradelle, Professor, Faculty of Law, University of Aix-en-Provence;

Mr. Jean Raimbert, Ministry of State.

Morocco

Representatives:

H.E. M. Driss Slaoui, Under-Secretary of State for Trade, Industry and the Mercantile Marine *(Chairman of the Delegation)*;

Mr. Mokhtar Hadj Nassar, Chargé d'Affaires in Berne;

Mr. Mohamed Bennani, Director of the Mercantile Marine.

Netherlands

Representatives:

Mr. W. Riphagen, Legal Adviser, Ministry of Foreign Affairs *(Chairman of the Delegation)*;

Jonkheer W. H. J. van Asch van Wijck, Permanent Representative to the European Office of the United Nations *(Vice-Chairman of the Delegation)*; [2]

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[2] Acted as Chairman from 20 April 1960.

Rear Admiral M. W. Mouton, Legal Adviser, Navy Staff;

Mr. G. J. Lienesch, Director of Fisheries, Ministry of Agriculture and Fisheries;

Mr. H. E. Scheffer, Legal Adviser, Ministry of Transport and *Waterstaat*;

Mr. A. Thurmer, Adviser, Minister of Agriculture, Fisheries and Food.

Adviser:

Mr. H. G. Schermers, Assistant Legal Adviser, Ministry of Foreign Affairs *(Secretary of the Delegation).*

New Zealand

Representative:

Mr. Robert Q. Quentin-Baxter, Deputy Permanent Representative to the United Nations *(Chairman of the Delegation)*;

Alternate Representative:

Miss Alison B. Souter, Department of External Affairs.

Nicaragua

Representative:

Mr. Antonio A. Mullhaupt, Consul in Geneva.

Norway

Representatives:

H.E. Mr. Oscar Christian Gundersen, Ambassador Extraordinary and Plenipotentiary *(Chairman of the Delegation)*;

Mr. Adolf Bredo Stabell, Director, Head of the Legal Department, Ministry for Foreign Affairs *(Vice-Chairman of the Delegation)*;

Mr. Frede Castberg, International Law Adviser, Ministry for Foreign Affairs; Professor, University of Oslo;

Mr. Johannes Sellaeg, Director, Ministry of Fisheries;

Mr. Olav Lund, Deputy Director, Directorate of Fisheries;

Mr. Kjeld Vibe, Secretary, Ministry for Foreign Affairs *(Secretary of the Delegation).*

Advisers:

Mr. Magnus Andersen, President, Norwegian Fishermen's Association;

Mr. Rasmus Ervik, Norwegian Fishing-Vessel Owners' Association;

Mr. Einar Haugen, Vice-President, Norwegian Seamen's Union;

Mr. Johannes Overaa, Director, Norwegian White Fish Sales Association.

Pakistan

Representatives:

H.E. Mr. M. S. A. Baig, Ambassador to Switzerland *(Chairman of the Delegation)*;

Mr. M. Yamin Qureshi, Deputy Secretary, Ministry of Food and Agriculture;

Commander M. Ahmed Khan Lodi, Naval Adviser, Pakistan High Commission, London.

Adviser:

Mr. S. M. Hussein, First Secretary of Embassy, Berne.

Panama

Representatives:

H.E. Dr. Miguel J. Moreno, Jr., Minister of External Relations *(Chairman of the Delegation)*;

H.E. Dr. Renato Ozores, Ambassador Extraordinary and Plenipotentiary;

H.E. Dr. Angel Rubio, Ambassador Extraordinary and Plenipotentiary;

H.E. Dr. Humberto Calamari, Ambassador Extraordinary and Plenipotentiary, Permanent Representative to the European Office of the United Nations;

H.E. Mr. Camilo Porras, Ambassador Extraordinary and Plenipotentiary.

Secretary:

Mr. H. S. Carlos R. Ozores.

Paraguay

Representative:

H.E. Dr. Ramiro Recalde de Vargas, Ambassador Extraordinary and Plenipotentiary to Italy.

Peru

Representatives:

H.E. Dr. Alberto Ulloa Sotomayor, former Minister for External Relations *(Chairman of the Delegation)*;

H.E. Dr. Enrique García Sayán, former Minister for External Relations;

Rear-Admiral Mariano H. Melgar, Chairman, Council of Marine Biology Research;

Dr. Edwin Letts, Director, Department of International Organizations and Conferences;

H.E. Mr. de la Fuente Locker, Ambassador, Permanent Representative to international organizations.

Advisers:

Dr. Luis Gamarra Dulanto;

Mr. Jorge Ganoza.

Secretaries:

Dr. Felipe Livoni Larco, First Secretary, Embassy, Berne;

Mr. Raúl María Pereira, Second Secretary, Permanent Mission, European Office of the United Nations;

Mr. Guillermo Mendoza, Second Secretary, Permanent Mission, European Office of the United Nations.

Philippines

Representatives:

H.E. Mr. Arturo M. Tolentino, Senator; Chairman, Constitutional and Law Revision Committee, Senate

Foreign Relations Committee *(Chairman of the Delegation)*;

H.E. Mr. Tomás G. de Castro, Ambassador to Switzerland.

Adviser:

Commander Avelino de Guzmán, Department of National Defence.

Secretary:

Miss Azucena A. Manio, Embassy, Berne.

Poland

Representatives:

Mr. Adam Meller-Conrad, Minister Plenipotentiary, Permanent Representative to the European Office of the United Nations *(Chairman of the Delegation)*;

Mr. Miroslaw Gasiorowski, Professor; Deputy Director, Legal Department, Ministry of Foreign Affairs *(Vice-Chairman of the Delegation)*;

Mr. Antoni Walczuk, Director of Department, Ministry of Navigation.

Adviser:

Mr. Andrzej Olszowka, Counsellor, Ministry of Foreign Affairs.

Portugal

Representatives:

H.E. Dr. Albano Nogueira, Minister Plenipotentiary, Deputy Director-General for Economic and Consular Affairs, Ministry of Foreign Affairs *(Chairman of the Delegation)*;

Dr. José Silvestre Ferreira Bossa, former Minister, Ministry of Overseas Territories;

Commodore Daniel Duarte Silva, Ministry of Marine; President, Central Fisheries Commission, representing corporate fishing bodies;

Commander Joaquim Gormicho Boavida, Naval Staff Officer, member of the Central Fisheries Commission; member of the Permanent Commission of International Maritime Law;

Dr. Vasco Taborda Ferreira, Doctor of Law, member of the Permanent Commission of International Maritime Law; legal adviser;

Dr. Mario João de Oliveira Ruivo, member of the Central Fisheries Commission; Deputy Director of the Institute of Marine Biology.

Secretary:

Dr. Carlos Pericao de Almeida, Fist Secretary of Legation, Ministry of Foreign Affairs.

Romania

Representatives:

Mr. Grigore Geamanu, Professor; Minister in Berne *(Chairman of the Delegation)*;

Mr. Edwin Glaser, Professor; Principal Legal Counsellor, Ministry of Foreign Affairs *(Vice-Chairman of the Delegation)*;

Mr. Androne Nae, Legal Adviser, Ministry of Foreign Affairs.

San Marino (Republic of)

Representatives:

Mr. Giorgio Giovanni Filipinetti, Minister Plenipotentiary, Permanent Representative to the European Office of the United Nations *(Chairman of the Delegation)*;

Mr. Emmanuel Noel, Consul General in Brussels.

Technical Adviser:

Mr. Herbert de Caboga.

Saudi Arabia

Representatives:

H.E. Mr. Ahmad Shukairy, Minister of State for United Nations Affairs *(Chairman of the Delegation)*;

Mr. Salem Azzam, Press Attaché, Berne.

Spain

Representatives:

Mr. José Manuel Aniel Quiroga, Director-General, Department of International Organizations, Ministry of External Affairs *(Chairman of the Delegation)*;

Mr. Luis García de Llera, Minister Plenipotentiary, Permanent Representative to the European Office of the United Nations *(Vice-Chairman of the Delegation)*;

Mr. Juán José de Jáuregui, Under-Secretary of the Merchant Marine;

Captain José Jaúdenes, Ministry of Marine;

Mr. José Gómez de Barreda, Directorate-General of Navigation, Ministry of Marine.

Lt. Colonel José Luis Azcárraga, Ministry of Marine.

Advisers:

Mr. Ignacio del Cuvillo, Head of National Fishing Syndicate;

Mr. Jerónimo Traspaderne, Administration of Maritime Fisheries;

Mr. José Manuel Lacleta, Secretary of Embassy;

Mr. Angel Fernández, Association of Owners of Fishing Vessels.

Secretary:

Mr. Ramón Fernández de Soignie, Secretary of Embassy; Permanent Mission, European Office of the United Nations.

Sudan

Representative:

H.E. Dr. Bashir El Bakri, Ambassador to France, Belgium and Holland.

Sweden

Representatives:

H.E. Mr. Sture Petrén, Ambassador Extraordinary and Plenipotentiary; Director of Legal Affairs, Ministry of Foreign Affairs *(Chairman of the Delegation)*;

H.E. Mr. Sven Dahlman, Ambassador Extraordinary and Plenipotentiary to the Netherlands *(Vice-Chairman of the Delegation)*;

Mr. Jöran Hult, Principal Director, Administration of Fisheries;

Mr. Torsten Gihl, former Professor of Stockholm University; Counsellor and expert in matters of international law, Ministry of Foreign Affairs;

Captain Hans Gottfridsson.

Advisers:

Mr. Hugo Lindgren, Secretary, Ministry of Foreign Affairs *(Secretary of the Delegation)*;

Mr. Georg Aberg, Federation of Fishermen on the West Coast of Sweden.

Switzerland

Representatives:

H.E. Mr. Paul Ruegger, Ambassador *(Chairman of the Delegation)*;

Mr. Jean de Rham, Minister Plenipotentiary, Head of the Division of International Organizations, Federal Political Department;

Dr. Alfred Schaller, President of the Council of State of the Canton of Basle-Ville; President of the Swiss Commission for Maritime Navigation;

Mr. Rudolf Bindschedler, Professor of International Law, Head of the Legal Service, Federal Political Department;

Mr. Bernard Turrettini, Deputy Head, Division of International Organizations, Federal Political Department;

Dr. Walter Müller, Barrister, Legal Adviser to the Swiss Commission for Maritime Navigation;

Mr. Gilbert de Dardel, Assistant, Division of International Organizations, Federal Political Department;

Mr. Herbert Duttwyler, Deputy Director of the Swiss Office for Maritime Navigation;

Mr. Ernest Froelich, former President of the Foundation for the Organization of Red Cross Transport.

Thailand

Representatives:

H.R.H. Prince Wan Waithayakon Krommun Naradhip Bongsprabandh, Deputy Prime Minister *(Chairman of the Delegation)*;

H.E. Mr. Chitti Sucharitakul, Ambassador to Switzerland *(Vice-Chairman of the Delegation)*;

Mr. Chapikorn Sreshthaputra, Acting Legal Adviser, Ministry of Foreign Affairs.

Advisers:

Commodore Jit Sangkhadul, Naval Attaché, Embassy, Paris;

Mr. Boon Indrambarya, Director-General of Fisheries, Bangkok;

Mr. Prayut Nawongs, Chief of Section, Ministry of Foreign Affairs *(Secretary of the Delegation)*.

Tunisia

Representatives:

H.E. Mr. Najib Bouziri, Ambassador to Italy *(Chairman of the Delegation)*;

Mr. Moncef Kedadi, Chargé d'Affaires, Berne;

Mr. Moncef Jaafar, Secretary of Embassy, Ministry of Foreign Affairs;

Mr. Hamida Ben Salem, Administrator of the Mercantile Marine and Fisheries, Chief of Technical and Commercial Navigation Services.

Turkey

Representatives:

H.E. Mr. Feridun Cemel Erkin, Ambassador Extraordinary and Plenipotentiary *(Chairman of the Delegation)*;

Mr. Necmettin Tuncel, Minister Plenipotentiary, Ministry of Foreign Affairs *(Vice-Chairman of the Delegation)*;

Mr. Sait Kandan, Adviser, Prime Minister's Office;

Mr. Sevket Müftügil, Director-General, Ministry of Justice;

Dr. Ilhan Lütem, Professor of International Law, University of Ankara;

Mr. Fethi Ariemre, Legal Adviser, Ministry of Trade.

Alternate Representatives:

Commander Hilmi Firat, Ministry of National Defence;

Mr. Turgut Pojon, Adviser, Ministry of Trade;

Mr. Haydar Aytekin, Director, Meat and Fish Office;

Mr. Sami Öngör, Professor of Geography, Institute of Education " Gazi ".

Adviser:

Mr. Ilhan Kiciman, Second Secretary, Ministry of Foreign Affairs.

Ukrainian Soviet Socialist Republic

Representatives:

Mr. Vladimir M. Koretsky, Member of the Academy of Sciences *(Chairman of the Delegation)*;

Mr. Konstantine Zabigailo, First Secretary, Ministry of Foreign Affairs;

Mr. Ivan Denesenko, Vice-Chairman of the Fishery Department of the State Plan.

Union of South Africa

Representatives:

H.E. Mr. M. I. Botha, Envoy Extraordinary and Minister Plenipotentiary to Switzerland *(Chairman of the Delegation)*;

Dr. L. Wessels, Q.C., Law Adviser, Department of Justice;

Mr. C. G. du Plessis, Director of Fisheries, Department of Commerce and Industries.

Union of Soviet Socialist Republics

Representatives:

Mr. Grigori Tunkin, Head of the Treaties and Legal Section, Ministry of Foreign Affairs *(Chairman of the Delegation)*;

Mr. Anatoli Nikolaev, Deputy Head of the Treaties and Legal Section, Ministry of Foreign Affairs *(Vice-Chairman of the Delegation)*;

Mr. Alexander Keilin, Professor, Institute of Foreign Trade; Legal Adviser, Ministry of Foreign Trade;

Mr. Andréi Shudro, Head of the Legal Section, Ministry of Merchant Marine Fleet;

Mr. Georgi Izhevski, Senior Scientific Officer, Scientific Research Institute of Sea Fisheries and Oceanography.

Advisers:

Mr. Dimitri Kolesnik, Second Secretary, Ministry of Foreign Affairs;

Colonel Peter Barabolia, Naval Legal Service;

Mr. Victor Khamanef, Assistant, Treaties and Legal Section, Ministry of Foreign Affairs.

United Arab Republic

Representatives:

H.E. Mr. Abdel Fattah Hassan, Ambassador, Permanent Representative to the European Office of the United Nations *(Chairman of the Delegation)*;

Mr. Hassan Salah Eddin Gohar, Minister Plenipotentiary; Director, Department of Palestinian Affairs, Ministry of Foreign Affairs;

Dr. Abdullah El Erian, Professor, Faculty of Law, University of Cairo.

Alternate Representatives:

Dr. Ahmed Esmat Abdel-Meguid, Adviser, Permanent Mission, European Office of the United Nations;

Dr. Ashraf Ghorbal, Adviser, Permanent Mission, European Office of the United Nations.

Advisers:

Mr. Atef El Nawawi, First Secretary, Ministry of Foreign Affairs;

Dr. Ali Samir Safwat, First Secretary, Permanent Mission, European Office of the United Nations.

United Kingdom of Great Britain and Northern Ireland

Representatives:

The Rt. Hon. John Hare, M.P., Minister of Agriculture, Fisheries and Food *(Chairman of the Delegation)*;

Sir Gerald Fitzmaurice, K.C.M.G., Q.C., Chief Legal Adviser to the Foreign Office *(Vice-Chairman of the Delegation)*;

Mr. R. G. R. Wall, Under-Secretary, Ministry of Agriculture, Fisheries and Food.

Advisers:

Miss Joyce A. C. Gutteridge, Assistant Legal Adviser, Foreign Office;

Mr. K. J. Simpson, Counsellor, Foreign Office;

Mr. B. H. Ashford-Russell, First Secretary, Permanent Mission to the United Nations;

Mr. D. M. Cleary, Assistant Secretary, Commonwealth Relations Office;

Mr. A. S. Aldridge, Principal, Colonial Office;

Mr. K. J. Pritchard, Department of the Secretary of the Admiralty;

Captain P. E. Bailey, R.N., Admiralty;

Commander R. H. Kennedy, O.B.E., R.N. (Rtd.), Naval Assistant, Hydrographic Department;

Mr. J. L. Rolleston, Principal, Ministry of Transport;

Mr. B. C. Engholm, Fisheries Secretary, Ministry of Agriculture, Fisheries and Food;

Mr. T. A. McDowall, Press Officer, Ministry of Agriculture, Fisheries and Food;

Mr. D. F. Williamson, Assistant Principal, Ministry of Agriculture, Fisheries and Food;

Mr. N. J. P. Hutchison, Assistant Secretary, Scottish Home Department.

Unofficial Advisers:

Mr. J. R. Cobley, British Trawlers' Federation;

Mr. P. Henderson, National Joint Industrial Council of the Fishing Industry.

Secretary:

Mr. M. J. Wilmshurst, Foreign Office.

Conference Officer:

Miss P. T. Metcalfe, Conference and Supply Department, Foreign Office.

United States of America

Representatives:

The Honorable Arthur H. Dean, Ambassador *(Chairman of the Delegation)*;

Mr. Arthur L. Richards, Special Assistant to the Under-Secretary for the law of the sea, Department of State *(Vice-Chairman of the Delegation)*;

Mr. Edward Tylor Miller, Attorney *(Vice-Chairman of the Delegation)*.

Alternate Representatives:

Vice-Admiral Oswald S. Colclough (Retd.), Department of Defense; President, George Washington University;

Mr. William C. Herrington, Special Assistant to the Under-Secretary for Fisheries and Wildlife, Department of State;

Mr. Arnie J. Suomela, Commissioner, Fish and Wildlife Service, Department of the Interior;

Mr. David W. Wainhouse, Minister-Counsellor, Embassy, Vienna;

Mr. Raymond T. Yingling, Assistant Legal Adviser, Department of State.

Advisers:

Mr. Norman Armour, Jr., Permanent Mission, United Nations, New York;

Mr. Frank Boas, Attorney;

Mr. Wilbert M. Chapman, Director, The Resources Committee, San Diego, California;

Mr. Ralph N. Clough, First Secretary of Embassy, London;

Mr. George J. Feldman, Attorney ;

Captain Leonard Hardy, Department of Defense;

Captain Wilfred A. Hearn, Department of Defense;

Lt. Commander Harold Hoag, Department of Defense;

Mr. Nat B. King, Consul General, Dacca;

Mr. Harold E. Lokken, Manager, Fishing-Vessel Owners' Association, Seattle;

Mr. John Lyman, National Science Foundation;

Mr. William R. Neblett, Executive Director, National Shrimp Congress, Key West, Florida;

Mr. Charles H. Owsley, Deputy Representative to the European Office of the United Nations;

Mr. G. Etzel Pearcy, The Geographer, Department of State;

Mr. Thomas D. Rice, Executive Secretary, Massachusetts Fisheries Association Inc., Boston;

Mr. Peter Roberts, Consul, Seville;

Mr. Harry Shooshan, Office of the Secretary, Department of the Interior;

Mr. George H. Steele, Director, Fishery Products Division, National Canners Association, Washington, D.C.;

Mr. Fred E. Taylor, Office of the Special Assistant to the Under-Secretary for Fisheries and Wildlife, Department of State;

Mr. William Terry, Fish and Wildlife Service, Department of the Interior;

Mr. William Witman, II, First Secretary of Embassy, Paris;

Mr. Edward E. Wright, Office of the Special Assistant to the Under-Secretary for the law of the sea, Department of State.

Secretary:

Mr. Virgil L. Moore, Conference Attaché, Permanent Mission to international organizations, Geneva.

Technical Secretary:

Mr. Ernest L. Kerley, Office of the Assistant Legal Adviser for United Nations Affairs, Department of State.

Documents Officer:

Miss Cecelia Lucas, Bureau of Intelligence and Research, Department of State.

Uruguay

Representatives:

Dr. Carlos María Velásquez, Ministry of External Relations *(Chairman of the Delegation)*;

Dr. Alvaro Alvarez, Ministry of External Relations.

Venezuela

Representatives:

H.E. Dr. Ramón Carmona, Ambassador; Legal Adviser, Ministry of External Relations *(Chairman of the Delegation)*;

Dr. Leonardo Díaz Gonzalez, Head of the Special Affairs Division, Department of International Organizations, Ministry of External Relations;

Dr. Manuel Quijada, Adviser, Permanent Mission to United Nations organizations;

Mr. Jesús Cuevas Picón, Director, Hydrographic and Navigation Service, Marine Headquarters;

Dr. Oscar Oyarzábal, Head of the Naval Installations Department, Marine Headquarters;

Dr. Felipe Martín Salazar, Head of the Fisheries and Wildlife Division, Ministry of Agriculture.

Secretaries:

Mr. Heriberto Aponte, First Secretary, Permanent Mission to the specialized agencies of the United Nations, Geneva;

Dr. Luisa Vera Barrios, Head of Section, United Nations Division, Ministry of External Relations.

Viet-Nam (Republic of)

Representatives:

Mr. Vu Van Mau, Professor, Secretary of State for Foreign Affairs *(Chairman of the Delegation)*;

Mr. Nguyen-Quoc-Dinh, Professor of International Law *(Vice-Chairman of the Delegation)*;

Mr. Le Tai Trien, Director, Department of International Conferences, Secretariat of State for Foreign Affairs;

Mr. Buu-Kinh, Counsellor of Embassy, Paris.

Yemen

Representatives:

Mr. Zouhair Kabbani, Minister, Permanent Representative to the European Office of the United Nations *(Chairman of the Delegation)*;

Mr. Moukhtar Elwakil, Counsellor, Permanent Mission, European Office of the United Nations.

Yugoslavia

Representatives:

H.E. Dr. Milan Bartoš, Ambassador, Secretariat of State for Foreign Affairs *(Chairman of the Delegation)*;

Mr. Vuksan Popovič, Director, Secretariat of State for Foreign Affairs *(Vice-Chairman of the Delegation)*;

Dr. Natko Katičič, Professor, Faculty of Law, University of Zagreb.

Secretary:

Mr. Pavle Živkovič, Secretary, Secretariat of State for Foreign Affairs.

Specialized Agencies

INTERNATIONAL LABOUR ORGANISATION

Mr. C. W. Jenks, Assistant Director-General of the International Labour Office;

Mr. Francis Wolf, Chief, Legal Division;

Mr. Tord H. Bratt, Chief, Industrial Workers Division;

Mr. K. El Zubeir, International Organizations Division.

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

Dr. Donovan Bartley Finn, Director, Fisheries Division;

Mr. S. J. Holt, Chief, Research Programmes Section, Fisheries Biology Branch, Fisheries Division;

Dr. J. A. Carroz, Legal Research Officer, Rural Legislation Branch, Department of Public Relations and Legal Affairs.

INTERNATIONAL CIVIL AVIATION ORGANIZATION

Mr. P. K. Roy, Director, Legal Bureau;

Dr. G. F. Fitzgerald, Senior Legal Officer.

WORLD HEALTH ORGANIZATION

Mr. Antoine Henri Zarb, Director, Legal Office;

Mr. Frank Gutteridge, Legal Office.

INTERNATIONAL TELECOMMUNICATION UNION

Dr. M. B. Sarwate, Deputy Secretary-General;

Mr. Clifford Stead, Counsellor.

WORLD METEOROLOGICAL ORGANIZATION

Mr. Jean René Rivet, Deputy Secretary-General;

Mr. Robert L. Munteanu, External Relations Officer.

INTER-GOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION

Mr. Ove Nielsen, Secretary-General.

International Atomic Energy Agency

Mr. Gordon W. Wattles, Acting Director, Legal Division.

Inter-governmental Organizations

CONSEIL GÉNÉRAL DES PÊCHES POUR LA MÉDITERRANÉE

Mr. Raffaele Cusmai, First Vice-President.

INTER-AMERICAN TROPICAL TUNA COMMISSION

Mr. Milner Bailey Schaefer, Director of Investigations.

INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

Mr. Robert Sandiford, Professor, University of Rome.

LEAGUE OF ARAB STATES

Mr. Zouhair Kabbani;

Mr. Moukhtar Elwakil.

ORGANIZATION FOR EUROPEAN ECONOMIC CO-OPERATION

Mr. Gunnar Gundersen, Head of the Fisheries Section.

PERMANENT CONFERENCE FOR THE EXPLOITATION AND CONSERVATION OF THE MARITIME RESOURCES OF THE SOUTH PACIFIC

Dr. Galo Leoro, Secretary-General.

OFFICERS OF THE CONFERENCE AND ITS COMMITTEES [1]

President of the Conference

Prince Wan Waithayakon (Thailand)

Vice-Presidents of the Conference

The representatives of the following Member States: Albania, Argentina, Canada, China, France, Ghana, Guatemala, Iran, Italy, Mexico, Norway, Poland, Switzerland, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America.

Committee of the Whole

Chairman:

Mr. José A. Correa (Ecuador)

Vice-Chairman:

Mr. Max Sörensen (Denmark)

Rapporteur:

Mr. Edwin Glaser (Romania)

Credentials Committee

Members:

The representatives of the following States: Brazil, Chile, France, Greece, Indonesia, Liberia, Sudan, Union of Soviet Socialist Republics, United States of America.

Chairman:

Mr. Nathan Barnes (Liberia)

[1] Circulated as document A/CONF.19/L.2.

SECRETARIAT OF THE CONFERENCE

Mr. C. A. Stavropoulos, Legal Counsel (Representative of the Secretary-General of the United Nations);

Dr. Yuen-li Liang, Director, Codification Division, Office of Legal Affairs (Executive Secretary);

Mr. G. Sandberg, Deputy Director, Codification Division, Office of Legal Affairs (Deputy Executive Secretary);

Mr. W. M. Cox, Deputy Director, Office of the Legal Counsel (Secretary of the Committee of the Whole);

Mr. P. Raton, Legal Officer (Secretary of the Credentials Committee);

Miss C. Rhodes, Special Assistant to the Executive Secretary.

Experts:

Professor J. P. A. François, Special Rapporteur of the International Law Commission on the law of the sea;

Dr. D. W. Bowett, Faculty of Law, University of Manchester.

AGENDA [1]

1. Opening of the Conference by the Secretary-General.
2. Election of the President.
3. Adoption of the agenda.
4. Adoption of the rules of procedure.
5. Election of Vice-Presidents.
6. Election of the Chairman of the Committee of the Whole.
7. Appointment of the Credentials Committee.
8. Organization of work.
9. Consideration of the questions of the breadth of the territorial sea and fishery limits in accordance with resolution 1307 (XIII) adopted by the General Assembly on 10 December 1958.
10. Adoption of conventions or other instruments regarding the matters considered and of the Final Act of the Conference.

[1] Adopted by the Conference at its 1st plenary meeting.

RULES OF PROCEDURE [1]

CHAPTER I. REPRESENTATION AND CREDENTIALS

Composition of delegations

Rule 1

The delegation of each State participating in the Conference shall consist of accredited representatives and such alternate representatives and advisers as may be required.

Alternates or advisers

Rule 2

An alternate representative or an adviser may act as a representative upon designation by the Chairman of the delegation.

Submission of credentials

Rule 3

The credentials of representatives and the names of alternate representatives and advisers shall be submitted to the Executive Secretary if possible not later than twenty-four hours after the opening of the Conference. The credentials shall be issued either by the Head of the State or Government, or by the Minister for Foreign Affairs.

Credentials Committee

Rule 4

A Credentials Committee shall be appointed at the beginning of the Conference. It shall consist of nine members who shall be appointed by the Conference on the proposal of the President. It shall examine the credentials of representatives and report to the Conference without delay.

Provisional participation in the Conference

Rule 5

Pending a decision of the Conference upon their credentials, representatives shall be entitled provisionally to participate in the Conference.

CHAPTER II. OFFICERS

Elections

Rule 6

The Conference shall elect a President and seventeen Vice-Presidents, as well as the Chairman of the Committee of the Whole provided for in rule 46. These officers shall be elected on the basis of ensuring the representative character of the General Committee. The Conference may also elect such other officers as it deems necessary for the performance of its functions.

President

Rule 7

The President shall preside at the plenary meetings of the Conference.

Rule 8

The President, in the exercise of his functions, remains under the authority of the Conference.

Acting President

Rule 9

If the President is absent from a meeting or any part thereof, he shall appoint a Vice-President to take his place.

Rule 10

A Vice-President acting as President shall have the same powers and duties as the President.

Replacement of the President

Rule 11

If the President is unable to perform his functions, a new President shall be elected.

The President shall not vote

Rule 12

The President, or Vice-President acting as President, shall not vote, but shall appoint another member of his delegation to vote in his place.

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[1] As adopted by the Conference at its 1st and 2nd plenary meetings and circulated as document A/CONF.19/7.

The text is the same as that of the provisional rules of procedure contained in document A/CONF.19/2, apart from the following modifications adopted at the 2nd plenary meeting:

(*a*) In rule 20 of the provisional rules, the sentence " The Secretariat shall be in charge of drawing up a list of such speakers " was added before the last sentence.

(*b*) In rule 41 of the provisional rules, the last sentence reading: " The Conference may, after each vote on a proposal, decide whether to vote on the next proposal " was deleted.

(*c*) In rule 49 of the provisional rules, the words " except paragraph 2 of rule 38 " were inserted after the words " The rules contained in chapters II, V and VI above "; and at the end of the rule the phrase " but not in the case of a reconsideration of proposals or amendments in which the majority required shall be that established by rule 32 " was added.

(*d*) In rule 54 of the provisional rules, the words " within three working days after the circulation of the summary record " were replaced by the words " within five working days.... "

Chapter III. General Committee

Composition

Rule 13

There shall be a General Committee of nineteen members, which shall comprise the President and Vice-Presidents of the Conference, and the Chairman of the Committee of the Whole. The President of the Conference or, in his absence, a Vice-President designated by him, shall serve as Chairman of the General Committee.

Substitute members

Rule 14

If the President or a Vice-President of the Conference finds it necessary to be absent during a meeting of the General Committee, he may designate a member of his delegation to sit and vote in the Committee. The Chairman of the Committee of the Whole shall, in case of absence, designate the Vice-Chairman of the Committee as his substitute. The Vice-Chairman shall not have the right to vote if he is of the same delegation as another of the General Committee.

Functions

Rule 15

The General Committee shall assist the President in the general conduct of the business of the Conference and, subject to the decisions of the Conference, shall ensure the co-ordination of its work.

Chapter IV. Secretariat

Duties of the Secretary-General and the Secretariat

Rule 16

1. The Secretary-General of the Conference shall be the Secretary-General of the United Nations. He, or his representative, shall act in that capacity in all meetings of the Conference and its committees.

2. The Secretary-General shall appoint an Executive Secretary of the Conference and shall provide and direct the staff required by the Conference and its committees.

3. The Secretariat shall receive, translate, reproduce and distribute documents, reports and resolutions of the Conference; interpret speeches made at the meetings, prepare and circulate records of the public meetings; have the custody and preservation of the documents in the archives of the United Nations; publish the reports of the public meetings; distribute all documents of the Conference to the participating Governments and, generally, perform all other work which the Conference may require.

Statements by the Secretariat

Rule 17

The Secretary-General or any member of the staff designated for that purpose may make oral or written statements concerning any question under consideration.

Chapter V. Conduct of business

Quorum

Rule 18

A quorum shall be constituted by the representatives of a majority of the States participating in the Conference.

General powers of the President

Rule 19

In addition to exercising the powers conferred upon him elsewhere by these rules, the President shall declare the opening and closing of each plenary meeting of the Conference, direct the discussions at such meetings, accord the right to speak, put questions to the vote and announce decisions. He shall rule on points of order and, subject to these rules of procedure, have complete control of the proceedings and over the maintenance of order thereat. The President may propose to the Conference the limitation of time to be allowed to speakers, the limitation of the number of times each representative may speak on any question, the closure of the list of speakers or the closure of the debate. He may also propose the suspension or the adjournment of the debate on the question under discussion.

Speeches

Rule 20

No person may address the Conference without having previously obtained the permission of the President. Subject to rules 21 and 22, the President shall call upon speakers in the order in which they signify their desire to speak. The Secretariat shall be in charge of drawing up a list of such speakers. The President may call a speaker to order if his remarks are not relevant to the subject under discussion.

Precedence

Rule 21

The Chairman or Rapporteur of a committee, or the representative of a sub-committee or working group, may be accorded precedence for the purpose of explaining the conclusion arrived at by his committee, sub-committee or working group.

Points of order

Rule 22

During the discussion of any matter, a representative may rise to a point of order, and the point of order shall be immediately decided by the President in accordance with the rules of procedure. A representative may appeal against the ruling of the President. The appeal shall be immediately put to the vote and the President's ruling shall stand unless overruled by a majority of the representatives present and voting. A representative rising to a point of order may not speak on the substance of the matter under discussion.

Time-limit on speeches

Rule 23

The Conference may limit the time to be allowed to each speaker and the number of times each representative

may speak on any question. When the debate is limited and a representative has spoken his allotted time, the President shall call him to order without delay.

Closing of list of speakers

Rule 24

During the course of a debate the President may announce the list of speakers and, with the consent of the Conference, declare the list closed. He may, however, accord the right of reply to any representative if a speech delivered after he has declared the list closed makes this desirable.

Adjournment of debate

Rule 25

During the discussion of any matter, a representative may move the adjournment of the debate on the question under discussion. In addition to the proposer of the motion, two representatives may speak in favour of, and two against, the motion, after which the motion shall be immediately put to the vote. The President may limit the time to be allowed to speakers under this rule.

Closure of debate

Rule 26

A representative may at any time move the closure of the debate on the question under discussion, whether or not any other representative has signified his wish to speak. Permission to speak on the closure of the debate shall be accorded only to two speakers opposing the closure, after which the motion shall be immediately put to the vote. If the Conference is in favour of the closure, the President shall declare the closure of the debate. The President may limit the time to be allowed to speakers under this rule.

Suspension or adjournment of the meeting

Rule 27

During the discussion of any matter, a representative may move the suspension or the adjournment of the meeting. Such motions shall not be debated, but shall be immediately put to the vote. The President may limit the time to be allowed to the speaker moving the suspension or adjournment.

Order of procedural motions

Rule 28

Subject to rule 22, the following motions shall have precedence in the following order over all other proposals or motions before the meeting:

(*a*) To suspend the meeting;

(*b*) To adjourn the meeting;

(*c*) To adjourn the debate on the question under discussion;

(*d*) For the closure of the debate on the question under discussion.

Proposals and amendments

Rule 29

Proppsals and amendments thereto shall normally be introduced in writing and handed to the Executive Secretary of the Conference, who shall circulate copies to the delegations. As a general rule, no proposal shall be discussed or put to the vote at any meeting of the Conference unless copies of it have been circulated to all delegations not later than the day preceding the meeting. The President may, however, permit the discussion and consideration of amendments, or motions as to procedure, even though these amendments and motions have not been circulated or have only been circulated the same day.

Decisions on competence

Rule 30

Subject to rule 22, any motion calling for a decision on the competence of the Conference to discuss any matter or to adopt a proposal or an amendment submitted to it shall be put to the vote before the matter is discussed or a vote is taken on the proposal or amendment in question.

Withdrawal of motions

Rule 31

A motion may be withdrawn by its proposer at any time before voting on it has commenced, provided that the motion has not been amended. A motion which has thus been withdrawn may be reintroduced by any representative.

Reconsideration of proposals

Rule 32

When a proposal has been adopted or rejected it may not be reconsidered unless the Conference, by a two-thirds majority of the representatives present and voting, so decides. Permission to speak on the motion to reconsider shall be accorded only to two speakers opposing the motion, after which it shall be immediately put to the vote.

Invitations to technical advisers

Rule 33

The Conference may invite to one or more of its meetings any person whose technical advice it may consider useful for its work.

CHAPTER VI. VOTING

Voting rights

Rule 34

Each State represented at the Conference shall have one vote.

Required majority

Rule 35

1. Decisions of the Conference on all matters of substance shall be taken by a two-thirds majority of the representatives present and voting.

2. Decisions of the Conference on matters of procedure shall be taken by a majority of the representatives present and voting.

3. If the question arises whether a matter is one of procedure or of substance, the President of the Conference shall rule on the question. An appeal against this ruling shall immediately be put to the vote and the President's ruling shall stand unless overruled by a majority of the representatives present and voting.

Meaning of the expression " representatives present and voting "

Rule 36

For the purpose of these rules, the phrase " representatives present and voting " means representatives present and casting an affirmative or negative vote. Representatives who abstain from voting shall be considered as not voting.

Method of voting

Rule 37

The Conference shall normally vote by show of hands or by standing, but any representative may request a roll-call. The roll-call shall be taken in the English alphabetical order of the names of the States participating in the Conference, beginning with the delegation whose name is drawn by lot by the President.

Conduct during voting

Rule 38

1. After the President has announced the beginning of voting, no representative shall interrupt the voting except on a point of order in connexion with the actual conduct of the voting. The President may permit representatives to explain their votes, either before or after the voting, except when the vote is taken by secret ballot. The President may limit the time to be allowed for such explanations.

2. For the purpose of this rule " voting " refers to the voting on each individual proposal or amendment.

Division of proposals and amendments

Rule 39

A representative may move that parts of a proposal or of an amendment shall be voted on separately. If objection is made to the request for division, the motion for division shall be voted upon. Permission to speak on the motion for division shall be given only to two speakers against. If the motion for division is carried, those parts of the proposal or of the amendment which are subsequently approved shall be put to the vote as a whole. If all operative parts of the proposal or of the amendment have been rejected, the proposal or the amendment shall be considered to have been rejected as a whole.

Vote on amendments

Rule 40

When an amendment is moved to a proposal, the amendment shall be voted on first. When two or more amendments are moved to a proposal, the Conference shall first vote on the amendment furthest removed in substance from the original proposal and then on the amendment next furthest removed therefrom, and so on until all the amendments have been put to the vote. Where, however, the adoption of one amendment necessarily implies the rejection of another amendment, the latter amendment shall not be put to the vote. If one or more amendments are adopted, the amended proposal shall then be voted upon. A motion is considered an amendment to a proposal if it merely adds to, deletes from or revises part of that proposal.

Voting on proposals

Rule 41

If two or more proposals relate to the same question, the Conference shall, unless it decides otherwise, vote on the proposals in the order in which they have been submitted.

Elections

Rule 42

All elections shall be held by secret ballot unless otherwise decided by the Conference.

Rule 43

1. If, when one person or one delegation is to be elected, no candidate obtains in the first ballot a majority of the representatives present and voting, a second ballot restricted to the two candidates obtaining the largest number of votes shall be taken. If in the second ballot the votes are equally divided, the President shall decide between the candidates by drawing lots.

2. In the case of a tie in the first ballot among three or more candidates obtaining the largest number of votes, a second ballot shall be held. If a tie results among more than two candidates, the number shall be reduced to two by lot and the balloting, restricted to them, shall continue in accordance with the preceding paragraph.

Rule 44

When two or more elective places are to be filled at one time under the same conditions, those candidates obtaining in the first ballot a majority of the representatives present and voting shall be elected. If the number of candidates obtaining such a majority is less than the number of persons or delegations to be elected, there shall be additional ballots to fill the remaining places, the voting being restricted to the candidates obtaining the greatest number of votes in the previous ballot, to a number not more than twice the places remaining to be filled; provided that, after the third inconclusive ballot, votes may be cast for any eligible person or delegation. If three such unrestricted ballots are inconclusive, the next three ballots shall be restricted to the candidates who obtained the greatest number of votes in the third of the unrestricted ballots, to a number not more than twice the places remaining to be filled, and the following three ballots thereafter shall be unrestricted, and so on until all the places have been filled.

Equally divided votes

Rule 45

If a vote is equally divided on matters other than elections, the proposal shall be regarded as rejected.

CHAPTER VII. COMMITTEES

Creation of committees

Rule 46

In addition to the General Committee and the Credentials Committee, the Conference shall establish a Committee of the Whole, and may establish such other committees as it deems necessary for the performance of its functions. Each committee may set up sub-committees or working groups.

Officers

Rule 47

Except in the case of the General Committee and the Chairman of the Committee of the Whole, each committee and sub-committee shall elect its own officers.

Quorum

Rule 48

A majority of the representatives on a committee or sub-committee shall constitute a quorum.

Officers, conduct of business and voting in committees

Rule 49

The rules contained in chapters II, V and VI above, except paragraph 2 of rule 38, shall be applicable *mutatis mutandis* to the proceedings of committees and sub-committees, except that decisions of committees and sub-committees shall be taken by a majority of the representatives present and voting, but not in the case of a reconsideration of proposals or amendments in which the majority required shall be that established by rule 32.

CHAPTER VIII. LANGUAGES AND RECORDS

Official and working languages

Rule 50

Chinese, English, French, Russian and Spanish shall be the official languages of the Conference. English, French and Spanish shall be working languages.

Interpretation from a working language

Rule 51

Speeches made in any of the working languages shall be interpreted into the other two working languages.

Interpretation from official languages

Rule 52

Speeches made in either of the other two official languages shall be interpreted into the three working languages.

Interpretation from other languages

Rule 53

Any representative may make a speech in a language other than the official languages. In this case he shall himself provide for interpretation into one of the working languages. Interpretation into the other working languages by the interpreters of the Secretariat may be based on the interpretation given in the first working language.

Summary records

Rule 54

Summary records of the plenary meetings of the Conference and of the meetings of the General Committee and of the Committee of the Whole shall be kept by the Secretariat. They shall be sent as soon as possible to all representatives, who shall inform the Secretariat within five working days after the circulation of the summary record of any changes they wish to have made.

Language of documents and summary records

Rule 55

Documents and summary records shall be made available in the working languages.

CHAPTER IX. PUBLIC AND PRIVATE MEETINGS

Plenary meetings and meetings of committees

Rule 56

The plenary meetings of the Conference and the meetings of committees shall be held in public unless the body concerned decides otherwise.

Meetings of sub-committees or working groups

Rule 57

As a general rule meetings of a sub-committee or working group shall be held in private.

Communiqué to the press

Rule 58

At the close of any private meeting a communiqué may be issued to the press through the Executive Secretary.

CHAPTER X. OBSERVERS FROM SPECIALIZED AGENCIES AND INTER-GOVERNMENTAL BODIES

Rule 59

1. Observers of specialized agencies and inter-governmental bodies invited to the Conference may participate, without the right to vote, in the deliberations of the Conference and the Committee of the Whole, upon the invitation of the President or Chairman, as the case may be, on questions within the scope of their activities.

2. Written statements of such specialized agencies and inter-governmental bodies shall be distributed by the Secretariat to the delegations at the Conference.

SUMMARY RECORDS OF PLENARY MEETINGS

FIRST PLENARY MEETING

Thursday, 17 March 1960, at 3.15 p.m.

Acting President: Mr. STAVROPOULOS (Legal Counsel to the United Nations, representing the Secretary-General)

later

President: Prince WAN WAITHAYAKON (Thailand)

Opening of the Conference

[Agenda item 1]

1. The ACTING PRESIDENT, on behalf of the Secretary-General of the United Nations, declared the Second United Nations Conference on the Law of the Sea open.

2. Mr. PALTHEY (Deputy Director of the European Office of the United Nations) welcomed the delegations to the Conference on behalf of the Director of the European Office, and said that the large number of countries participating in it, and the fact that those countries were represented by eminent jurists and economists, showed the importance which Governments attached to the questions to be discussed.

3. He recalled that the first United Nations Conference on the Law of the Sea, which had been held at the European Office of the United Nations in 1958, had found it possible to formulate a broad range of rules relating to the international law of the sea. The present Conference was called upon to perform the difficult task of completing the work of the first, and he expressed his warmest wishes for its success, while assuring the Conference that it could count on the fullest co-operation of the staff of the European Office.

4. The ACTING PRESIDENT welcomed the delegations on behalf of the Secretary-General, who much regretted his inability to attend the opening of the Conference. The Secretary-General regarded the Conference as an occasion of the utmost importance and its outcome as a matter of real concern to all States.

5. He recalled that, at the opening of the 1958 Conference, he had expressed the hope that that Conference would not find any cause for pessimism in the memory of the failure of the Conference for the Codification of International Law, held at The Hague in 1930. The outcome of the 1958 Conference had fully justified that hope, although the measure of success attained by it was not sufficiently appreciated or known. Within the comparatively short time of nine weeks the 1958 Conference had adopted four Conventions, an Optional Protocol of Signature concerning the Compulsory Settlement of Disputes and nine resolutions.[1] Of the eighty-six States represented at the Conference, forty-four had signed the Convention on the Territorial Sea and the Contiguous Zone, forty-nine had signed the Convention on the High Seas, thirty-seven the Convention on Fishing and Conservation of the Living Resources of the High Seas and forty-five the Convention on the Continental Shelf. The Optional Protocol had been signed by thirty States. Afghanistan had ratified the Convention on the Territorial Sea and the Contiguous Zone; the United Kingdom had recently ratified the Convention on the Territorial Sea and the Contiguous Zone, the Convention on the High Seas and the Convention on Fishing and Conservation of the Living Resources of the High Seas, and was taking steps to enact the necessary legislation to ratify the Convention on the Continental Shelf. Other States were in the process of securing parliamentary approval with a view to the ratification of one or more of the Conventions, and it could be surmised that an agreement reached at the present Conference would induce other States to follow suit.

6. The 1958 Conference could therefore not be regarded as anything other than a success, a success which had been due in a large measure to two factors. First, the Conference had had before it, as a basis for its work, the draft articles prepared by the International Law Commission between 1949 and 1956;[2] the Conference, in its resolution IX, had paid a well-deserved tribute to that Commission for its excellent work. The second factor had been the spirit of co-operation and understanding which had prevailed throughout the Conference.

7. Two important questions, however, had remained unsolved: the breadth of the territorial sea and that of fishery limits. The 1958 Conference had accordingly, in its resolution VIII, requested the General Assembly to study the advisability of convening a second conference to consider the questions left unsettled. By its resolution 1307 (XIII) of 10 December 1958, the General Assembly, acting on that request, had decided to convene the present Conference.

8. The two questions before the Conference posed complex political and economic problems and revealed various conflicts of interest. Those problems were not, however, insoluble and the interests of States were not irreconcilable. Given patience, political wisdom and understanding, a solution could be worked out which would serve the interests of the international community as a whole and prove in the long run more beneficial than the pursuit of immediate or apparent national interest.

9. He drew attention to the provisional agenda (A/CONF. 19/1), the provisional rules of procedure (A/CONF.19/2) and the memorandum on methods of work (A/CONF. 19/3) prepared by the Secretariat. He conveyed to the Conference the Secretary-General's warmest wishes for its success and his hope that it would make an important contribution to the codification and progressive development of international law and to the furthering of peace and justice among nations.

[1] See *Official Records of the United Nations Conference on the Law of the Sea*, vol. II, annexes.

[2] See *Official Records of the General Assembly, Eleventh Session, Supplement No. 9*, chap. II.

Question of the representation of China

10. Mr. TUNKIN (Union of Soviet Socialist Republics) said that his delegation considered it necessary to make a statement at that stage with regard to the convening of the Conference. The State of China, one of the founders of the United Nations and one of the most important Powers of the world, was not represented at the Conference. In accordance with international law, China could only be represented at an international conference by representatives appointed by the Government of the People's Republic of China. The absence of the lawful representatives of China and the attempt to treat the representatives of Chiang Kai-shek as those of China were inadmissible and in violation of international law.

11. He also drew attention to the discriminatory terms of the relevant passage of General Assembly resolution 1307 (XIII). The fact that invitations were addressed only to Members of the United Nations and of the specialized agencies meant that certain countries, which were being artificially kept out of the specialized agencies, were thereby debarred from participating in an international conference. As a consequence the Governments of the German Democratic Republic, the Democratic People's Republic of Korea, the Democratic Republic of Viet-Nam and the Mongolian People's Republic, had not been invited to participate in the work of the Conference. The absence of representatives of those countries, like the anomalous position in the matter of the representation of China, was contrary to the principles of international law and inconsistent with the very purpose of a conference which was to formulate rules of international law capable of being recognized by all States.

12. Mr. DEAN (United States of America) said that the remarks of the USSR representative were out of order. The question which that representative had raised had been decided by the General Assembly in its resolution 1307 (XIII) convening the Conference. Under the terms of that resolution, " all States Members of the United Nations and States members of the specialized agencies " had been invited to the Conference, and hence only representatives of those States could participate in its work.

13. Mr. LIU (China) said that the question of the representation of China had been raised by the Soviet Union delegation more than two hundred times at international meetings, and in every instance the representation of China by its only legitimate Government, that of the Republic of China, had been upheld. To raise the question of the representation of China was to ignore the General Assembly resolution under which the Conference had been convened. Moreover, it would make a mockery of the efforts to codify international law to admit the Chinese Communists who, since their military seizure of the mainland of China, had defied all standards of international conduct.

14. The ACTING PRESIDENT said that there was no motion before the Conference. The statement of the USSR representative would be placed on record.

15. Mr. PFEIFFER (Federal Republic of Germany) said that the so-called German Democratic Republic was not a State in the legal sense of the word but merely the Soviet zone of occupation of Germany, which was governed by authorities imposed on its population by the forces of occupation in defiance of the principle of self-determination. The question which had been raised in that connexion was, as pointed out by the United States representative, outside the Conference's terms of reference under resolution 1307 (XIII).

16. Mr. MELLER-CONRAD (Poland) said that his delegation could not recognize the rulers imposed upon the unwilling inhabitants of a Chinese island as the legitimate Government of China, and he expressed regret at the absence from the Conference of a representative of the People's Republic of China. It was also a matter for regret that Poland's neighbour, the German Democratic Republic, as well as the Democratic People's Republic of Korea, the Democratic Republic of Viet-Nam and the Mongolian People's Republic were not represented.

17. Mr. MELLER-CONRAD could not acknowledge the right of the representative of the Federal Republic of Germany to pass judgement on the situations ruling in other countries or to give lessons in matters of international law, when in the Federal Republic of Germany there were still in office nearly a thousand judges who had held office at the time when the only law for them was the law of the jungle.

18. Mr. MAU (Republic of Viet-Nam) said that the Conference was bound not only by its terms of reference under General Assembly resolution 1307 (XIII) but also by the precedent set by the first United Nations Conference on the Law of the Sea.[3] His delegation accordingly considered the statement of the USSR representative out of order.

19. Mr. SOHN (Republic of Korea) said that the Conference had no power to go beyond its terms of reference; the question raised by the USSR representative was therefore out of order. The Government of the Republic of Korea was the only lawful representative of the whole of Korea; the regime set up in the northern part of the country, in addition to having no legal standing, was under outside control.

20. Mr. PECHOTA (Czechoslovakia) said that the absence of legitimate representatives of the great State of China, an important maritime country with a long coastline, would hamper the work of the Conference. The only lawful representatives of China whom his delegation could recognize were the representatives designated by the Central People's Government of the People's Republic of China.

21. In order to arrive at a satisfactory solution of the problems of the territorial sea and fishery limits, the Conference should hear the views of all States. The arbitrary exclusion of the representatives of the German Democratic Republic, the Democratic People's Republic of Korea, the Democratic Republic of Viet-Nam and the Mongolian People's Republic, was contrary to international law and deprived the Governments of those countries of the opportunity which they should have

[3] See *Official Records of the United Nations Conference on the Law of the Sea*, vol. II, 1st plenary meeting, paras. 14-31.

of expressing their views on the important issues before the Conference and of taking part in its deliberations.

22. Mr. LAMANI (Albania) noted with indignation the absence of representatives of the People's Republic of China. The presence of the envoys of Chiang Kai-shek who had usurped their place was contrary to law and prejudicial to the work of the Conference. It was also abnormal that the German Democratic Republic, the Democratic People's Republic of Korea, the Democratic Republic of Viet-Nam and the Mongolian People's Republic were not represented.

Election of the President

[Agenda item 2]

23. The ACTING PRESIDENT invited nominations for the office of President of the Conference.

24. Mr. SEN (India) proposed Prince Wan Waithayakon (Thailand), who had presided over the first United Nations Conference on the Law of the Sea in 1958; the remarkable, though not complete, success of the first Conference was attributable in large measure to Prince Wan's guidance.

Prince Wan Waithayakon (Thailand) was elected President by acclamation and took the Chair.

25. The PRESIDENT thanked the Conference for the honour it had bestowed on him, and paid a tribute to the hospitality and courtesy of the Swiss Government.

26. Much progress had been made towards the codification of the law of the sea and he was proud to have co-operated in bringing that progress about. Nothing would give him greater satisfaction than to see the present Conference achieve complete success. Failure to reach agreement would serve neither the interests of the participating States nor those of the peoples of the world. Time was limited but should be adequate, if all the participants mobilized their resources of wisdom, skill, patience and conciliation to reach a solution based on justice and logic which would satisfy the practical needs of the situation. Fortified by the continued goodwill and patience of all, and assisted by the Secretariat, he would endeavour to facilitate deliberations and bring them to a successful conclusion.

Adoption of the agenda

[Agenda item 3]

The provisional agenda (A/CONF.19/1) was adopted.

Adoption of the rules of procedure (A/CONF.19/2, A/CONF.19/L.1)

[Agenda item 4]

27. The PRESIDENT drew attention to the provisional rules of procedure prepared by the Secretariat (A/CONF. 19/2) and to the amendments proposed by the delegation of Mexico (A/CONF.19/L.1) to rules 20, 41, 49 and 54. He suggested that the provisional rules of procedure should be adopted with the exception of those to which amendments had been proposed, and their consideration of the amendments should be postponed to the following meeting.

It was so agreed.

The provisional rules of procedure, with the exception of rules 20, 41, 49 and 54 were adopted.

Election of the Chairman of the Committee of the Whole

[Agenda item 6]

28. The PRESIDENT invited nominations for the office of Chairman of the Committee of the Whole.

29. Sir Kenneth BAILEY (Australia) proposed Mr. Correa (Ecuador), whose knowledge of international law and extensive experience of international affairs had been appreciated at the first United Nations Conference on the Law of the Sea.

30. Mr. GARCIA ROBLES (Mexico) seconded the proposal.

Mr. Correa (Ecuador) was unanimously elected Chairman of the Committee of the Whole.

31. Mr. CORREA (Ecuador) thanked the Conference for the honour done to his country and to himself.

Organization of work (A/CONF.19/3)

[Agenda item 8]

32. The PRESIDENT drew attention to the memorandum of the Secretary-General (A/CONF.19/3), and in particular to the advice contained in sections III and IV of that memorandum. He suggested that the Conference should follow that advice.

It was so agreed.

The meeting rose at 4.30 p.m.

SECOND PLENARY MEETING

Friday, 18 March 1960, at 10.50 a.m.

President: Prince WAN WAITHAYAKON (Thailand)

Adoption of the rules of procedure (A/CONF.19/2, A/CONF.19/L.1) *(concluded)*

[Agenda item 4]

1. Mr. GARCIA ROBLES (Mexico) said that the commentaries appended to the amendments proposed by his delegation (A/CONF.19/L.1) to rules 20, 41, 49 and 54 of the provisional rules of procedure of the Conference (A/CONF.19/2) were self-explanatory.

2. The PRESIDENT invited the Conference to consider the Mexican amendment to rule 20 of the provisional rules of procedure. The amendment would insert before the last sentence of rule 20 the following sentence: " The Secretariat shall be in charge of drawing up a list of such speakers."

3. Mr. DEAN (United States of America) asked the representative of Mexico why his delegation felt the amendment was necessary. The list of speakers was prepared by the President and Secretariat jointly, a procedure which had always worked satisfactorily.

4. Sir Gerald FITZMAURICE (United Kingdom) said that he too would be glad to have some further explanation of the Mexican amendment. The commentary stated that the object was to bring the Conference's procedure into line with that of the General Assembly, but rules 70 and 111 of the rules of procedure of the General Assembly corresponded exactly with the proposed rule 20. The preparation of the list of speakers had always been a presidential function, with the assistance of the Secretariat and the representative of the Secretary-General; to make any change would be undesirable and invidious.

5. Mr. GARCIA ROBLES (Mexico) said the Mexican amendment did not claim to make any innovation in the procedure followed in the United Nations. Its sole purpose was to make quite clear that the practice invariably followed by the General Assembly should be likewise applied at the Conference. Since the Conference had not yet been able to work out a stable procedure, his delegation had thought that what was implicit in General Assembly procedure should now be made explicit.

6. The PRESIDENT put to the vote the Mexican amendment to rule 20 of the provisional rules of procedure.

The amendment was adopted by 45 votes to 10, with 20 abstentions.

7. The President invited the Conference to consider the Mexican amendment to rule 41 of the provisional rules of procedure. The amendment would delete the last sentence reading: " The Conference may, after each vote on a proposal, decide whether to vote on the next proposal."

8. Mr. DEAN (United States of America) supported the amendment. The rule as amended would give the members of the Conference an opportunity to express their views on all the proposals and provide for the flexibility essential in a conference of that kind.

The amendment was adopted by 72 votes to none, with 2 abstentions.

9. The PRESIDENT invited the Conference to consider the amendments submitted by Mexico to rule 49 of the provisional rules of procedure. The amendments consisted in adding after the word " above " the phrase " except paragraph 2 of rule 38 ", and in adding at the end of the rule the phrase " but not in the case of a reconsideration of proposals or amendments in which the majority required shall be that established by rule 32."

10. Mr. DEAN (United States of America) regretted that he found the amendments to rule 49 unacceptable. A vote might be taken in the Committee of the Whole on a series of amendments, and some delegation might wish to point out the possible effect that the vote on one amendment might have on the disposal of the remainder. The first Mexican amendment would hamper the proceedings. The second amendment was unnecessarily restrictive; to require a two-thirds majority for the reconsideration of a proposal in the Committee of the Whole would be to transfer to the work of that Committee the atmosphere of a plenary meeting. The Conference had been convened to seek a solution to two very important problems, to exchange and explore ideas and to obtain workable results. The requirement of a two-thirds majority for reconsideration in the Committee of the Whole would hamper the negotiation of the compromises that would be needed to achieve those ends.

11. Sir Gerald FITZMAURICE (United Kingdom) supported the United States representative. It was not clear why the Secretariat had introduced into the rules paragraph 2 of rule 38, which had not been included in the rules of procedure of the first Conference, but the addition in the particular circumstances of the present Conference was to be welcomed. Since the Conference had voted for the Mexican amendment to rule 41, it should, logically, reject the first amendment to rule 49, because it would introduce precisely that element of rigidity which the amendment to rule 41 had removed. Paragraph 2 of rule 38 had probably been inserted in order to obtain such flexibility and should be equally applicable to the debates in the Committee of the Whole and to those in the plenary.

12. As stated in the commentary to the second amendment to rule 49, a proposal for reconsideration normally required a two-thirds majority, not only in General Assembly plenary meetings, but also in its committees, even where only a simple majority was required for a vote on the substance. That rule had, however, been altered at the first Conference, and the requirement of only a simple majority for reconsideration even in committee had worked perfectly well, even though there had been a number of points of detail which it had been undesirable to re-open. It should work even better at the second Conference, because little detail was involved, and only two large questions were at issue. As the whole purpose of the Committee of the Whole would be to test what support there was for proposals, the greatest possible flexibility would be needed. Proposals for reconsideration should therefore be voted by simple majority in the Committee of the Whole, while the two-thirds majority rule should naturally be retained for the plenary meetings.

13. Mr. LIANG (Executive Secretary) explained that although the substance of the new paragraph 2 of rule 38 was not explicitly stated in rules 90 and 129 of the General Assembly's rules of procedure — on conduct during voting — the Secretariat's intention had been to stress the importance of completing the voting on individual proposals or amendments. At the General Assembly and at international conferences held under United Nations auspices, a delegation often submitted a document described as a proposal, which might in fact consist of a series of proposals or amendments. Such composite proposals had sometimes been regarded as a single proposal for the purpose of voting, and difficulties had arisen when a number of separate amendments or proposals were not intimately linked and the

process of voting could not be finished until the series had been exhausted. The real purpose of rule 38 had been to prevent interruptions in the conduct of voting except on a point of order in connexion with it. The Mexican delegation might be correct in stating that the new paragraph was praiseworthy since it would facilitate the adoption of decisions, but the Secretariat's main intention in proposing the addition had merely been to ensure that the voting was undisturbed.

14. Mr. GARCIA ROBLES (Mexico) said that his delegation had submitted two amendments to article 49. Both were consistent with the other Mexican amendments; the second, however, was more important than the first.

15. The reasons for the first amendment were clearly explained in the commentary to that amendment (A/CONF.19/L.1). Essentially his delegation wished the same procedure to be followed as in the Main Committees of the General Assembly of the United Nations, in order to avoid the unnecessary loss of time which would be caused if the voting were interrupted and the debate reopened each time a vote was taken on a proposal or an amendment.

16. With regard to the second and more important amendment, he considered that it was sufficiently explained in the commentary to that amendment (A/CONF. 19/L.1). He only wished to add that he could not agree with the United Kingdom representative that the application of the simple majority rule for the reconsideration of proposals in committee had worked well at the first Conference; experience at the 62nd meeting of the First Committee of that Conference [1] was proof positive to the contrary. It would be a very serious mistake to fail to correct an obviously inadvertent omission in the rules of procedure of the first Conference, as otherwise there was a danger that the debates in the Committee of the Whole would be endless.

17. Sir Claude COREA (Ceylon) observed that the second Mexican amendment was acceptable, since great difficulties would arise at a conference such as the present if the requirement of a two-thirds majority for a proposal for reconsideration in committee were not adopted. Just as there was a difference between the first discussion and the reconsideration of a proposal, so should there be a difference between the requirement of a simple majority and of a two-thirds majority. He could imagine situations in which a proposal might be carried by a very small majority, and the subsequent shift of only a very few votes might entitle a delegation to press for reconsideration. Such a process might continue interminably. Narrow majorities would, in fact, tempt delegations to propose reconsideration. The amendment might bring some degree of rigidity into the proceedings, but the prospects of orderly debate should not be sacrificed. The two-thirds majority for reconsideration should be required both in plenary meetings and in committee.

18. Mr. DREW (Canada) saw some merit in the Mexican representative's argument, but the present Conference differed greatly from the first Conference, when the law of the sea had been discussed in its entirety. At the first Conference there had been good reasons for restricting discussion. Now all delegations had a common desire to find a basis for agreement that would give the world for the first time a comprehensive code of international law relating to the sea. The purpose in setting up a Committee of the Whole was to provide the flexibility that would make possible a merging of ideas before final proposals were submitted to the plenary meeting. The greatest possible flexibility was therefore needed in committee proceedings.

19. Mr. TUNKIN (Union of Soviet Socialist Republics) observed that since the conference was confronted with the task of establishing a code of norms of international law relating to the sea, it must discourage any attempts of manoeuvre by the use of a few votes. The Ceylonese representative had correctly intimated that the experience of the first Conference had shown that such attempts might be made. To solve weighty problems by the manipulation of a few votes might actually make the situation worse. The first Mexican amendment was acceptable, since no difficulties had been experienced in committee at the first Conference with the original rule 38. Experience also suggested that the second amendment was acceptable. Those who had attended the meetings of the First Committee would remember how the situation had deteriorated when an attempt had been made to reconsider a proposal. That had happened because the rules of procedure of the first Conference had not provided for the requirement now embodied in the second Mexican proposal.

20. Mr. GARCIA ROBLES (Mexico) asked that the vote be taken separately on each of the Mexican amendments.

21. The PRESIDENT put to the vote the two Mexican amendments to rule 49 of the provisional rules of procedure.

The first amendment was adopted by 36 votes to 23, with 14 abstentions.

The second amendment was adopted by 41 votes to 30, with 7 abstentions.

22. The PRESIDENT asked the Conference to consider the Mexican amendment to rule 54 of the provisional rules of procedure. The amendment would replace the word " summary " by the word " verbatim ".

23. Mr. STAVROPOULOS (Legal Counsel, representing the Secretary-General) said that, while he appreciated the considerations which had inspired the Mexican amendment, he must draw attention to the serious budgetary and administrative difficulties which acceptance of that amendment would provoke. The plans for the second Conference had been based on the arrangements made for the first Conference, and the budget estimates submitted to the General Assembly at its thirteenth session had provided only for the cost of keeping summary records of the meetings, as at the first Conference. If any delegation had felt that summary records were not sufficient, the question should have been raised during the discussion of the budget for the conference in the General Assembly. The question had not been raised, however, and the budget as adopted by the

[1] *Official Records of the United Nations Conference on the Law of the Sea*, vol. III, p. 194.

General Assembly included funds only for summary records. He regretted therefore that the Secretariat did not have either the trained personnel or the financial means for providing verbatim records. Indeed, the Conference of the Ten-Nation Committee on Disarmament and the Conference on the Discontinuance of Nuclear Weapon Tests at present sitting in the Palais des Nations were both working with a reduced number of verbatim reporters, owing to the lack of staff. There was thus no possibility of finding verbatim reporters for the present conference.

24. As the Mexican delegation had pointed out, verbatim records of the Sixth Committee had been made available to the first United Nations Conference on the Law of the Sea.[2] Those records had been prepared, however, from tape-recordings, and had not been available till two months after the end of the General Assembly's session. That method, therefore, would be of little use to the present Conference. A trilingual record with no translation, produced from a tape-recording, would cost approximately $5,000 and would involve no additional expenditure in view of the saving on précis-writers, but verbatim records in the three working languages would cost $52,000, which was approximately $46,000 more than had been budgeted for. In either case, no records would be available till approximately two months after the close of the Conference.

25. The general practice at conferences held under the auspices of the United Nations was to provide summary records only, and verbatim records had so far as he was aware been provided only at the two Conferences on the peaceful uses of atomic energy. Those records had consisted mainly of scientific papers, and the funds for their reproduction in full had been budgeted for in advance. He understood the general concern that the records of the Conference should represent fairly and accurately the views expressed, but hoped that that aim could be achieved by taking advantage of the right enjoyed by all delegations of submitting corrections for incorporation in the final record.

26. Mr. DEAN (United States of America) said that, although he recognized the cogency of some of the arguments adduced by the Mexican delegation, in the light of the information just given he felt that it might now wish to withdraw its amendment to rule 54 of the provisional rules of procedure.

27. Mr. FATTAL (Lebanon) said the Conference should defer to the arguments advanced by the representative of the Secretary-General. He would like, however, to suggest that it might be of advantage to use the services of French and Spanish précis-writers for reporting speeches made in those languages. The fact was that, however experienced translators might be, successive translation tended to distort the meaning of a speech. That was merely a suggestion to help the Conference, however, and must not be regarded as a formal proposal.

28. Mr. TUNKIN (Union of Soviet Socialist Republics) said that no one would deny the desirability of keeping full and accurate records of the Conference, and his delegation therefore supported the Mexican proposal in principle. The statement by the representative of the Secretary-General, however, made it clear that that was quite impracticable for both financial and technical reasons. He accordingly hoped that the Mexican delegation would take those reasons into account.

29. Mr. GARCIA-ROBLES (Mexico) agreed that it would have been more appropriate to raise the question of substituting verbatim records for summary records at the thirteenth session of the General Assembly, but pointed out that at that time an opportunity to do so had not arisen, as the convening of the Conference had itself then been at issue. He hoped the arrangements for future conferences of that nature might receive fuller consideration.

30. In the light of the statement by the representative of the Secretary-General, his delegation was prepared to withdraw its amendment to rule 54, provided that the period of three working days allowed for the submission of corrections to summary records was extended to five working days and that the trilingual verbatim record mentioned by the Secretary-General's representative was made available in due course for consultation. His delegation would submit a resolution on the subject of the provision of verbatim records of the Conference.

31. Mr. STAVROPOULOS (Legal Counsel, representing the Secretary-General) said that the time allowed for the submission of corrections to summary records would be extended to five working days, as requested by the Mexican delegation; he could give an assurance that every effort would be made to provide very accurate summary records.

32. The PRESIDENT suggested that, as the Secretariat had agreed to extend the period allowed for the submission of corrections to summary records to five working days, the Conference could now adopt rule 54 of the provisional rules of procedure as amended.

It was so agreed.

The provisional rules of procedure (A/CONF.19/2), as amended, were adopted.

The meeting rose at 12.35 p.m.

THIRD PLENARY MEETING

Friday, 18 March 1960, at 3.15 p.m.

President: Prince WAN WAITHAYAKON (Thailand)

Election of Vice-Presidents

[Agenda item 5]

1. The PRESIDENT invited the Conference to elect seventeen Vice-Presidents, in accordance with rule 6 of the rules of procedure.

2. The representatives of the following seventeen States had been nominated for the office of Vice-President: Albania, Argentina, Canada, China, France, Ghana, Guatemala, Italy, Iran, Mexico, Norway, Poland,

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[2] A/CONF.13/19.

Switzerland, the Union of Soviet Socialist Republics, the United Arab Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America. He thought that list would ensure the representative character of the General Committee in conformity with rule 6. If there were no further nominations and no objections, he suggested that the Conference should regard the representatives of the States he had enumerated as duly elected Vice-Presidents.

It was so agreed.

Appointment of the Credentials Committee

[Agenda item 7]

3. The PRESIDENT, referring to the provisions of rule 4 of the rules of procedure, proposed that the following States be appointed to constitute the Credentials Committee: Brazil, Chile, France, Greece, Indonesia, Liberia, Sudan, the Union of Soviet Socialist Republics and the United States of America.

It was so agreed.

Consideration of the questions of the breadth of the territorial sea and fishery limits in accordance with resolution 1307 (XIII) adopted by the General Assembly on 10 December 1958

[Agenda item 9]

Adoption of conventions or other instruments regarding the matters considered and of the Final Act of the Conference

[Agenda item 10]

4. The PRESIDENT suggested that the two substantive items on the Conference's agenda should be referred to the Committee of the Whole established under rule 46 of the rules of procedure.

It was so agreed.

The meeting rose at 3.30 p.m.

FOURTH PLENARY MEETING

Friday, 8 April 1960, at 11 a.m.

President: Prince WAN WAITHAYAKON (Thailand)

Tribute to the memory of General Guisan

On the proposal of the President, the Conference observed a minute of silence in tribute to the memory of General Guisan, commander-in-chief of the Swiss armed forces during the Second World War.

1. Mr. RUEGGER (Switzerland), speaking on behalf of the Swiss Federal Council and the delegation of the Swiss Confederation, thanked the President for his expression of sympathy. Having paid a tribute to the personality of General Guisan, who could be regarded as a symbol of the active neutrality of the Swiss people, he said that the name of that great leader would henceforth live in history, a history fraught with danger and suffering but also imbued with hopes which were, even if only partially, in process of fulfilment.

Report of the General Committee

2. The PRESIDENT announced that the General Committee had decided to recommend to the Conference that Friday, 22 April 1960, be fixed as the target date for the conclusion of the discussions and voting on the proposals before it — on the understanding that, if necessary, the Conference would meet again on Saturday, 23 April 1960 — and that the Final Act, and other instrument or instruments which might be adopted by the Conference, could be signed during the afternoon of Monday, 25 April 1960.

3. He proposed that the Conference should adopt that recommendation.

It was so decided.

The meeting rose at 11.25 a.m.

FIFTH PLENARY MEETING

Tuesday, 19 April 1960, at 10.30 a.m.

President: Prince WAN WAITHAYAKON (Thailand)

Consideration of the questions of the breadth of the territorial sea and fishery limits in accordance with resolution 1307 (XIII) adopted by the General Assembly on 10 December 1958 (A/CONF.19/L.4 to L.6) *(continued)**

[Agenda item 9]

REPORT OF THE COMMITTEE OF THE WHOLE (A/CONF.19/L.4)

1. The PRESIDENT invited the Rapporteur of the Committee of the Whole to present the Committee's report (A/CONF.19/L.4) to the Conference.

2. Mr. GLASER (Romania), Rapporteur of the Committee of the Whole, introduced the Committee's report.

The meeting rose at 11 a.m.

SIXTH PLENARY MEETING

Wednesday, 20 April 1960, at 10.50 a.m.

President: Prince WAN WAITHAYAKON (Thailand)

Consideration of the questions of the breadth of the territorial sea and fishery limits in accordance with resolution 1307 (XIII) adopted by the General Assembly on 10 December 1958 (A/CONF.19/L.4 to L.6) *(continued)*

[Agenda item 9]

1. Mr. DREW (Canada), referring to current speculation about the possibility of adjourning the Conference,

* Resumed from the 3rd plenary meeting.

stated emphatically that the Canadian delegation would strongly oppose any such course, which, in its view, could lead to the failure of the Conference. The Conference's terms of reference were clear, and the matters before it had been thoroughly discussed. He believed therefore that, to put an end to such harmful conjecture, a time-limit for the submission of proposals and a definite date for the voting on them should be fixed as soon as possible.

2. He pointed out that the comparison recently made between the vote on the United States proposal[1] at the 14th plenary meeting of the first Conference and the vote taken on the joint Canadian and United States proposal (A/CONF.19/C.1/L.10) at the 28th meeting of the Committee of the Whole of the present Conference was misleading. At the first Conference, the result of the vote in committee had differed greatly from the vote in plenary session, the proposal having failed to secure a majority in the former only to win a very substantial one in the latter. In the light of that happening, the very nature of the compromise embodied in the joint Canadian and United States proposal would, in his view, ensure it the necessary two-thirds majority in plenary. There was growing support for it, and some delegations which had voted against it, or abstained, in the Committee of the Whole has already indicated that they intended to support it in plenary session. As he had said earlier, the joint proposal represented a broad compromise between the different views held on certain points of detail and it would be wise to recognize that no single formula could hope fully to meet every problem. But there were encouraging signs that differences on details could be satisfactorily adjusted by direct negotiation between the countries concerned.

3. While it had been rightly pointed out, on the basis of the draft articles prepared by the International Law Commission,[2] that the Commission had found no support in international law for a three-mile territorial sea — a fact borne out by the readiness of States which at present maintained a three-mile territorial sea to advocate a limit of six miles — it was equally true that nothing in the Commission's recommendations supported, either explicitly or implicitly, the claim to a twelve-mile territorial sea. The Commission had left the matter open, expressing the view that the breadth of the territorial sea should be fixed by an international conference. The General Assembly had convened the present Conference for that purpose, without suggesting that either a three-mile or a twelve-mile territorial sea was in any way established as a rule of international law. It was now the responsibility of the Conference to establish that limit by a free vote. The vote in committee had shown that the formula embodied in the joint Canadian and United States proposal could secure the necessary two-thirds majority, whereas any proposal for a twelve-mile territorial sea clearly could not. Thus the issue with which delegations now making their choice were faced was not merely which proposal would succeed, but whether the Conference itself would succeed or fail. The Canadian delegation believed that, with a free exchange of opinion and normal democratic procedure, it was highly desirable that everyone should support the only proposal that could succeed.

4. It had been suggested that even a two-thirds vote of the Conference would not satisfactorily solve the problem, as some States would still not abide by the Conference's decision. He believed it would be a denial of the principles on which the work of the Conference was based to decide that the only way to agree was to yield to a position supported by a minority. He hoped, on the contrary, that when two-thirds of the Conference had accepted the proposal many delegations which had hitherto advocated a territorial sea more than six miles broad would consider it desirable to conform to the general arrangement. No United Nations meeting or body could ever hope to accomplish its task without general acceptance of the decision of a two-thirds majority. He recalled that, despite differences of opinion, highly satisfactory and mutually acceptable conclusions based on reasonable argument had been reached at a recent whaling conference in London and at a conference on sealing in Moscow. He hoped that those examples would be followed at the present Conference and that both sides would meet on common ground and conclude a general world agreement, within which mutual arrangements adapted to specific, local conditions could be worked out.

5. Mr. GARCIA AMADOR (Cuba) also believed that the Conference should consider fixing a date for the voting on proposals; better still, the matter could be decided by the President, subject to later adjustment if necessary.

6. Mr. TUNKIN (Union of Soviet Socialist Republics) reminded the Conference that at the 4th plenary meeting 22 April had been agreed upon as the date for the conclusion of the discussions and the voting, and 25 April as the date on which the Final Act would be opened for signature. No proposal had been made that those dates be changed, and no discussion seemed necessary. He nevertheless believed, like previous speakers, that a time-limit should be fixed for the submission of proposals for consideration in plenary session, and that the matter could be usefull considered by the General Committee, preferably immediately after the present meeting. A date could then be fixed for the closure of the Conference.

7. With regard to the rumours mentioned by the Canadian representative, he too saw no good reason for adjourning the Conference. The questions before it had been adequately debated, and there was still time to explore new possibilities of achieving some measure of success; even if a complete solution to the problems could not be found, a partial one might be possible. But he did not share the Canadian representative's optimism about the prospects of the joint Canadian and United States proposal.

The meeting rose at 11.35 a.m.

[1] *Official Records of the United Nations Conference on the Law of the Sea*, vol. II, annexes, document A/CONF.13/L.29.

[2] *Official Records of the General Assembly, Eleventh Session, Supplement No. 9*, chap. II.

SEVENTH PLENARY MEETING

Wednesday, 20 April 1960, at 3.15 p.m.

President: Prince WAN WAITHAYAKON (Thailand)

Second report of the General Committee

1. The PRESIDENT announced that at its 2nd meeting, held that morning, the General Committee had agreed to recommend to the Conference that voting on the proposals before it should take place on Tuesday, 26 April 1960, and that the Final Act of the Conference be opened for signature on Wednesday, 27 April 1960.

The recommendation of the General Committee was adopted unanimously.

The meeting rose at 3.25 p.m.

EIGHTH PLENARY MEETING

Thursday, 21 April 1960, at 3.30 p.m.

President: Prince WAN WAITHAYAKON (Thailand)

Publication of a complete verbatim record of the discussions at the Conference: draft resolution submitted by Mexico (A/CONF.19/L.3)

1. The PRESIDENT drew attention to the Mexican draft resolution (A/CONF.19/L.3) relating to the publication of a complete verbatim record of the discussions at the Conference, and observed that he had been informed that the Secretariat had doubts about the meaning of the word " publication " in the operative paragraph thereof. The sum of $5,000 mentioned by the representative of the Secretary-General at the 2nd plenary meeting as the estimated cost of a trilingual record, with no translation, produced from the sound recordings, referred to publication in mimeographed form; the figure would probably be considerably higher if the record had to be printed.

2. Mr. GARCIA ROBLES (Mexico) explained that the Mexican draft resolution had been couched in the form of a recommendation to the General Assembly, the question raised by the Secretariat being left open. The Conference might approve the recommendation as it stood and leave it to the representatives of Governments in the Fifth Committee of the General Assembly, who were financial experts, to decide the appropriate form of publication in the light of the usual statement of financial implications provided by the Secretariat.

The Mexican draft resolution (A/CONF.19/L.3) was adopted without further discussion.

The meeting rose at 3.45 p.m.

NINTH PLENARY MEETING

Friday, 22 April 1960, at 10.30 a.m.

President: Prince WAN WAITHAYAKON (Thailand)

Consideration of the questions of the breadth of the territorial sea and fishery limits in accordance with resolution 1307 (XIII) adopted by the General Assembly on 10 December 1958 (A/CONF.19/L.4 to L.6) *(continued)**

[Agenda item 9]

1. Mr. PETREN (Sweden) reminded the Conference of his Government's position of principle. For legal, just as much as for practical reasons, Sweden was opposed both to an extension of the breadth of the territorial sea beyond six nautical miles and to the entirely novel concept of fishery zones in which coastal States would enjoy exclusive fishing rights. Moreover, the Swedish Government believed that the creation of a new rule of international law, which was the point at issue, could not result from unilateral actions against which many Governments had raised their voice. Any such development of international law demanded the assent of the States affected, given unqualifiedly by the ratification of the texts of any conventions that might be drawn up by the Conference. In that respect, the Swedish delegation shared the views expressed by the head of the French delegation when explaining his vote at the 28th meeting of the Committee of the Whole.

2. The Swedish delegation, it would be remembered, had been unable to vote for any of the proposals before the Committee of the Whole, but of all those submitted the compromise text submitted jointly by Canada and the United States of America (A/CONF.19/C.1/L.10) had come closest to Sweden's position of principle. When that proposal had been put to the vote, the Swedish delegation had abstained. Anxious as it was to help the Conference to arrive at a constructive result, it would now be prepared, in a spirit of compromise, to vote for the proposal, which had been adopted by the Committee of the Whole, notwithstanding the fact that the solution advocated by its sponsors would entail great sacrifices by Sweden, as by many other countries not only of principle but also economically. In modifying its vote in that way the Swedish delegation hoped that delegations which saw the problems in a different light would also be moved by the spirit of compromise to make concessions and to support the proposal adopted by the Committee of the Whole. Naturally, if no compromise could be reached, Sweden would regard itself as entirely free to revert to its position of principle, so often made clear.

The meeting rose at 11 a.m.

* Resumed from the 6th plenary meeting.

TENTH PLENARY MEETING

Monday, 25 April 1960, at 10.45 a.m.

President: Prince WAN WAITHAYAKON (Thailand)

Report of the Credentials Committee (A/CONF.19/L.7)

1. At the invitation of the PRESIDENT, Mr. BARNES (Liberia), the Chairman of the Credentials Committee, introduced the Committee's report (A/CONF.19/L.7). In its report the Committee stated that, out of the eighty-eight delegations attending the Conference, full powers in respect of the representatives of eighty-six delegations had been received; where Paraguay and Yemen were concerned, the credentials had consisted of telegrams. The Committee also reported that it had adopted by 5 votes to 3 with 1 abstention a proposal by the United States delegation that no decision be taken regarding the credentials submitted on behalf of the representative of Hungary.

2. Mr. USTOR (Hungary) said that Hungary would vote against the acceptance of the report of the Credentials Committee. The illegality and absurdity of the Committee's decision with regard to the Hungarian credentials, taken on the proposal of the United States representative, were abundantly clear. The examination of credentials was solely a legal act and should be performed independently and impartially. It was outrageous that the Committee had abandoned every consideration of law and justice and had yielded to the " cold war " propaganda put out by the State Department of the United States. Had the Committee conducted itself properly, it would certainly have found the Hungarian credentials in order. At the 17th plenary meeting of the first United Nations Conference on the Law of the Sea [1] a similar motion by the United States delegation had been rejected. If the Hungarian credentials had been found in good and due form in 1958, it was hard to see why precisely identical credentials were not good in 1960. Furthermore, at the 856th plenary meeting of the General Assembly [2] the United States delegation had itself sponsored the proposal in which Hungary would be a member of the Committee on the Peaceful Uses of Outer Space, when it must have been fully aware that Hungary would be represented on that Committee by a delegation of the same Government, the credentials of whose representative it was now impugning. For a country enjoying diplomatic relations with another country such conduct was most invidious, and it was equally invidious that other countries should support it.

3. The explanation of the apparent inconsistency of the United States delegation's attitude was that, despite the tremendous efforts being made to rid the world of the " cold war " — a trend discernible even in some policies of the United States — there were still strong forces in the United States which wished to continue the " cold war ", and the issue before the Conference was one particularly suited to their purposes. Those circles deliberately ignored the elections held in Hungary in 1958 and the recently promulgated political amnesty. Their aim was simply to achieve a propaganda effect; but even if they succeeded, that could not impair the standing of the Hungarian delegation at the Conference in accordance with the rules of procedure. Hungary was a firm believer in peaceful co-existence, and participated in international co-operation through the United Nations and many other international institutions. The Hungarian delegation had every right to attend the Conference and any effort to cast doubt on that right would conflict with the Charter and with the principles of international co-operation, and would be a disturbing element in the international atmosphere which was otherwise happily improving.

4. Sir Claude COREA (Ceylon) explained that his delegation would accept the report of the Credentials Committee, subject to two reservations. First, his delegation wished to state, as it had done on earlier occasions, with regard to the question of the representation of China, that the Government of Ceylon had recognized the Central People's Government of the People's Republic of China and maintained diplomatic relations with that Government and could not, therefore, accept the situation set out in paragraphs 5 to 8 of the report. Secondly, with regard to the credentials of the Hungarian delegation, he must reiterate the Ceylonese delegation's opinion that as delegations had been sent by Governments invited to the Conference by the United Nations it would be impossible to refuse to recognize their credentials, provided that they were in order. The Government of Hungary had received an invitation and the only valid question was therefore whether its representative's credentials were in order; the report made clear that they were in good and due form.

5. Mr. BARTOS (Yugoslavia) said that his delegation would vote in favour of the adoption of the Credentials Committee's report, subject, however, to an express reservation regarding the question of the representation of China. So far as Yugoslavia was concerned, the Government having authority to represent a country should be regarded as the lawful representative of that country; and that authority was conferred upon the Government which exercised sovereign rights and effective power in the territory of the country concerned. The Yugoslav delegation disagreed with the Credentials Committee's decision on China, as it believed that the Conference was a sovereign body competent to judge the validity of the credentials of its participants.

6. Secondly, he said his delegation had to formulate a reservation concerning the Committee's decision on the credentials of the Hungarian delegation, a decision which was the regrettable result of a misguided compromise between politics and law. The Yugoslav delegation considered that the representative of the People's Republic of Hungary had the same right to sign the instruments of the Conference as the representatives of other countries.

7. Mr. DEAN (United States of America) said that he would vote for the Credentials Committee's report. In view of the continuing disregard by the present Hungarian authorities of all United Nations decisions

[1] *Official Records of the United Nations Conference on the Law of the Sea*, vol. II.

[2] *Official Records of the General Assembly, Fourteenth Session, Plenary Meetings.*

concerning Hungary, the Conference should take the same position as the General Assembly. Since 1956 the General Assembly had consistently voted to take no decision regarding the credentials submitted on behalf of the representatives of Hungary. The effect of that action was to place Hungary in a provisional status. At the thirteenth session of the General Assembly, which had adopted resolution 1307 (XIII) convening the Conference, the decision on the Hungarian credentials had been repeated, as indeed it had been at the fourteenth session. Hungary's status had therefore been provisional when the invitation had been issued. It was true that the first Conference had accepted the Hungarian credentials, but that had occurred before the executions of Imre Nagy and General Maleter in cynical disregard of United Nations decisions. The General Assembly had only recently been informed that executions and other repressive measures were continuing in Hungary.

8. Mr. NIKOLAEV (Union of Soviet Socialist Republics) said that his delegation's views, expressed in the Credentials Committee, concerning the representation of China and the question of the credentials of the Hungarian delegation, remained unchanged. The Soviet Union could not admit that the great country of China should be represented at the Conference by a small clique of emigré reactionaries who had fled to a small island off the Chinese mainland and had no longer any communication with the Chinese people. The People's Republic of China had been in existence for ten years and had made great strides in its economic development. It was now a great Power, with a legitimate Government which enjoyed the support of the country's 600 million inhabitants. Accordingly, only the representatives of that Government could speak on behalf of China at the Conference.

9. Furthermore, the decision to leave open the question of the credentials of representatives of the Hungarian People's Republic was absolutely unfounded. Hungary was participating in the Conference as a Member of the United Nations, under General Assembly resolution 1307 (XIII); the Secretary-General of the United Nations had sent the invitation to Budapest and the legitimate Government of the country had appointed a delegation. The credentials had been issued by the Presidium of the People's Assembly and signed by the President, fully in accordance with the rules of procedure of the Conference. It was obvious that the United States delegation had raised the question because certain circles in the United States were maintaining the " cold war ", despite the recently created favourable conditions for peaceful co-existence.

10. Subject to those two reservations, his delegation would vote in favour of the report of the Credentials Committee.

11. Mr. WANG Hua-cheng (China) expressed regret that the question of the representation of China had again been injected into the debate, particularly at that stage of the Conference's deliberations. His Government was the only constitutionally established Government of China which maintained relations with the overwhelming majority of free nations and was a loyal Member of the United Nations and the specialized agencies. The General Assembly, in resolution 1307 (XIII), had specified that all States Members of the United Nations and the specialized agencies should be invited to participate in the Conference, and his Government had represented China in all United Nations organs and conferences, including the first United Nations Conference on the Law of the Sea. He deplored the language used by the Soviet representative in his statement; while not wishing to reply in like terms he would point out that his Government had nothing to be ashamed of so far as support of the people, both on the mainland and abroad, was concerned. While the Republic of China did not claim to be an earthly paradise, its inhabitants did not try to escape and seek political asylum abroad.

12. Mr. NAE (Romania) said that his delegation would vote in favour of the report, subject to reservations concerning the absence of the People's Republic of China, which had the right to be represented at the Conference, and concerning the representation of the People's Republic of Hungary.

13. The PRESIDENT put the report of the Credentials Committee (A/CONF.19/L.7) to the vote.

The report of the Credentials Committee was adopted by 78 votes to 1, with 4 abstentions.

14. Mr. EL ERIAN (United Arab Republic) said that the fact that he had voted for the report did not affect his country's firm conviction that the People's Republic of China should be duly represented in the United Nations and its view that the credentials of the Hungarian representatives were in order.

15. Mr. RADOUILSKY (Bulgaria) explained that his delegation, which had voted in favour of the report, nevertheless did not recognize the legitimacy of the delegation which claimed to represent China. Secondly, it considered the credentials exhibited by the Hungarian delegation to be in good and proper form.

16. Mr. YASSEEN (Iraq) said that, although his delegation had voted in favour of the Credential Committee's report, the fact that it had done so did not change in any way the position taken by Iraq in the United Nations of the question of the representation of China and that of Hungary.

17. Mr. SEN (India) explained that his delegation's vote in favour of the report did not prejudice its well-known position with respect to the credentials of the delegations of China and Hungary.

18. Mr. POVETIEV (Byelorussian Soviet Socialist Republic) said that his delegation's vote in favour of the report did not indicate any change in its position concerning the representation of China and the credentials of the Hungarian delegation. It was inadmissible that one of the largest countries in the world should not be represented by its rightful representative and that his place should be taken by persons who represented no one but themselves. In his delegation's opinion, China's international relations could not be conducted by anybody other than the representatives of the Government of the People's Republic of China. Furthermore, his delegation vigorously objected to attempts to cast doubt on the credentials of the Hungarian delegation,

which had been issued strictly in accordance with General Assembly resolution 1307 (XIII); those attempts had obviously been motivated by the wish of certain circles in the United States to continue the cold war.

19. Mr. KORETSKY (Ukrainian Soviet Socialist Republic) said that, although he had voted for the report, his delegation considered the passages concerning the representation of China and the credentials of the Hungarian delegation to be inadmissible. It was both regrettable and anomalous that no real representatives of the Chinese people were able to attend United Nations conferences. Furthermore, the recommendation concerning the Hungarian credentials was absolutely unfounded, and motivated by a spirit contrary to that of the United Nations Charter.

20. Mr. EL BAKRI (Sudan), confirming his Government's position as expressed in the Credentials Committee, said that Sudan recognized the People's Republic of China and had voted against the United States motion concerning the Hungarian credentials. Accordingly, he had voted for the report with those two reservations.

21. Mr. CHHAT PHLEK (Cambodia) said that his delegation had voted in favour of the report but that its position with respect to the People's Republic of China had in no way changed.

22. Mr. QUARSHIE (Ghana) said that, although his delegation had voted in favour of the report, it had done so with reservations concerning the representation of China and the question of the Hungarian credentials. Ghana recognized the People's Republic of China and considered that China was not properly represented at the Conference. It also believed that the only lawful Government of Hungary was represented at the Conference.

23. Mr. CUADROS QUIROGA (Bolivia) said his delegation wished to make a reservation concerning the passage in the report relating to the credentials of the Hungarian delegation, for the reasons expressed by other speakers.

24. Mr. MELLER-CONRAD (Poland) said that, though his delegation had voted in favour of the report, it wished to formulate express reservations concerning the Committee's decisions on the representation of China and the credentials of the Hungarian delegation. The decisions of the majority in the Credentials Committee were wrong in ruling that the present representation of China was lawful because it had been invited whereas that of the Hungarian Government was not, although that Government had also received an invitation.

25. Mr. PECHOTA (Czechoslovakia) said that his delegation's vote in favour of the report should not be construed as approval of the passages relating to the representation of China and the credentials of the Hungarian delegation, which were illegal decisions imposed by a small majority. His delegation considered that the only legitimate representatives of the Chinese people could be those appointed by the People's Republic of China, and it protested against attempts to cast doubt on the validity of the credentials of Hungarian representatives.

26. Mr. DEAN (United States of America) drew attention to the fact that, under General Assembly resolution 1307 (XIII), the General Assembly had invited to the Conference all States Members of the United Nations and the specialized agencies. The Republic of China was a Member State and hence its Government alone was qualified to represent China at the Conference. The communist Chinese Government, on the other hand, departed from the normal rules of international conduct and had shown nothing but contempt for the principles of the United Nations.

Consideration of the questions of the breadth of the territorial sea and fishery limits in accordance with resolution 1307 (XIII) adopted by the General Assembly on 10 December 1958 (A/CONF.19/L.4, L.5/Rev.1, L.6, L.8 to L.13) *(continued)*

[Agenda item 9]

27. Mr. ASAFU-ADJAYE (Ghana) said that his delegation's attitude throughout the debates had been marked by its concern for the general success of the Conference. Accordingly, it had endeavoured to find a solution that would be acceptable to the advocates of both the twelve-mile and the six-mile limit. With that aim in view, it had submitted some amendments (A/CONF. 19/L.10) to the second proposal adopted by the Committee of the Whole (A/CONF.19/L.4, annex). It had since ascertained that the amendments in their present form would not achieve their purpose; he therefore withdrew his delegation's text, in the hope that that action would pave the way to a satisfactory solution. In that same spirit, and in the belief that the success of the Conference was more important than its own interests, Ghana would not obstruct the possibility of reaching agreement by voting for or against the main proposals.

28. Mr. GARCIA ROBLES (Mexico) said that in a last attempt at compromise to prevent the Conference from ending in failure, ten delegations had submitted a new proposal in the form of a draft resolution (A/CONF. 19/L.9). Although only ten delegations had put their names to the draft resolution, he expected it to receive the support of nearly all the eighteen sponsors of the earlier proposal (A/CONF.19/C.1/L.2/Rev.1) submitted to the Committee of the Whole. The draft resolution attempted to reflect the existing situation, since only a proposal which did so had any prospect of success.

29. There were two facts which were so real as to be axiomatic with regard to the fundamental question of the breadth of the territorial sea and the secondary question of fishery limits. The first fact was that, unfortunately, there was still a wide divergence of views on the breadth of the territorial sea, as had been emphasized by the voting at the 28th meeting of the Committee of the Whole on the joint Canadian and United States proposal (A/CONF.19/C.1/L.10), which had received 43 votes in favour, 33 against, with 12 abstentions. The second fact was that there was general agreement that the coastal State should be permitted to exercise the same fishing rights and rights to exploit the living resources of the sea in the sea adjoining its coast up to the limit of twelve nautical miles measured from the

applicable baseline as it did in its territorial sea. In a booklet entitled *The Law of the Sea: The Canadian Position on the Breadth of the Territorial Sea and Fishing Limits*, issued by the Canadian Government in December 1959, it had been pointed out that all the relevant proposals submitted to the first Conference recognized, implicitly or explicitly, that a State could properly claim jurisdiction over fishing in an area of twelve miles contiguous to the shoreline.

30. Those two facts had provided the basis for the ten-Power draft resolution. It had become evident that no agreement could be reached on the breadth of the territorial sea before the close of the Conference. The sponsors had therefore come to the conclusion that the best that could be done would be to take note of the existence of that disagreement and to make it possible for the General Assembly to consider the advisability of convening another United Nations conference within a reasonable time — perhaps five years — in which the necessary preparatory work could be carried out, so that premature and over-hasty decisions would be avoided.

31. Since there was general agreement about fishery limits, the sponsors had concluded that there would be no objection to recognizing those limits immediately, without prejudging the question of the breadth of the territorial sea until the General Assembly had again considered the question. At the same time, in order to give satisfaction to those States which refused to take any decision on fishery limits unless it was bound up with the question of the breadth of the territorial sea, the draft resolution requested all States participating in the Conference which had declared their independence prior to 24 October 1945 (the date of the establishment of the United Nations) to abstain from extending the present breadth of their territorial sea for five years or, in other words, until the twentieth regular session of the General Assembly. The maintenance of the *status quo* might well help to dispel the maritime Powers' fears that States might take advantage of the five-year interval to extend their territorial sea up to twelve miles. Since the draft resolution dealt only with the principal question, it was silent concerning the special or exceptional cases, but the proposal would not prejudice any arrangement for them.

32. Since, unfortunately, circumstances stood in the way of any ambitious solution, the ten-Power draft resolution, despite its limited scope, or perhaps even because of it, seemed to offer the best means of achieving a positive result at the Conference. It was an incontrovertible fact that the time was not yet ripe for a general and freely accepted agreement on the breadth of the territorial sea. Since the law on that subject had varied so greatly and for so many centuries, it should be regarded as a considerable step forward that the question had now been narrowed down to the issue: should the breadth of the territorial sea be twelve or six miles ? The question was still so thorny that excessive haste would be sterile and even self-defeating.

33. Mr. MATINE-DAFTARY (Iran) said that although the majority — incidentally, a small majority — had voted in favour of the Canadian and United States compromise proposal (A/CONF.19/C.1/L.10) in the Committee of the Whole, the success of that compromise did not depend on the total length of the coastline of the States supporting it. By a narrow margin, the proposal of the eighteen delegations (A/CONF.19/C.1/L.2/Rev.1) had received only a minority of the votes, but the States forming that minority had, in the aggregate, a very long coastline. In a Conference such as the present decisions were made by vote, but the vote did not necessarily create law. Accordingly, whatever codification might result from the vote would not be binding on the States unless they signed and ratified the instrument embodying the codification.

34. After careful reflection the delegation of Iran had decided not to obstruct those delegations which were hoping to save the prestige of the Conference and to produce some tangible result, even though the result might not be worth more than the paper it was written on. His delegation had taken that decision while fully realizing that those delegations had paid little heed to the needs of many of the States of Asia, Africa and Latin America, and even though as a consequence a compromise having a general validity had not materialized. At the same time, however, he wished to state, on the instructions of his Government, that his delegation's decision did not constitute a reversal of Iran's position. So far as the twelve-mile rule was concerned, he referred to his statement at the 17th meeting of the Committee of the Whole in which he had cited the Iranian law of 1959. He added that, if the Canadian and United States proposal received a two-thirds majority, Iran would be unable to sign or to ratify the convention embodying that proposal so long as a general agreement had not materialized and so long as the majority of the States which continued to support the twelve-mile rule (and above all Iran's neighbours) did not acquiesce in it.

35. Mr. GARCIA AMADOR (Cuba) said that he had the impression that the Conference was approaching an agreement which might muster the assent of the great majority of participating States and at the same time go a long way towards satisfying the economic interests of those who might have preferred to solve the problems examined by the Conference in some other way. The amendments submitted jointly by Brazil, Cuba and Uruguay (A/CONF.19/L.12) to the second proposal adopted by the Committee of the Whole (A/CONF.19/L.4, annex) might go some way towards stimulating such agreement. The purpose of the amendments was to make it easier for those who believed that the proposal did not go far enough towards meeting the needs and special interests of all coastal States in the conservation and exploitation of the resources of the sea to accept that proposal, without disregarding the legitimate interests of other States and the international community in general in areas of the high seas. In order to harmonize those two sets of needs and interests, the amendments established a system of preferential fishing rights for the coastal State in an area of the high seas adjacent to the area in which that State enjoyed exclusive fishing rights and which was provided for in the proposal adopted by the Committee of the Whole.

36. The first amendment, dealing with possible bilateral, multilateral or regional agreements, simply stated expressly what was in any case implicit in any instrument of the kind under consideration by the Conference.

37. The other amendments confirmed preferential fishing rights explicitly, and unequivocally. There should be no doubt whatever about their intent, even if the wording of the amendments might be thought inadequate or not categorical enough. The coastal State could properly claim preferential fishing rights vis-à-vis all other States. Indeed, the very limitations or conditions by which the exercise of such rights was qualified in the amendments reasserted and demonstrated their recognition. The only crucial question in that connexion was what was the nature or extent of those limitations or conditions—in other words, in what circumstances could the coastal State legitimately exercise preferential fishing rights in areas of the high seas. Those limitations were defined in the proposed new paragraph 6, in which the phrase "when it is scientifically established" appeared. It would, of course, be necessary also to limit the total catch of a stock or stocks of fish in such areas in accordance with the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas—in other words, if it should become necessary to reduce intensive fishing in order to maintain or restore the optimum sustainable yield from that stock or those stocks. In the absence of the circumstances described, the coastal State could not claim preferential rights; indeed, in that case the coastal State would manifestly not need to claim such rights. Nor could it be argued that the rights to be conferred were being conferred gratuitously and unjustifiably, and might be exercised or claimed for purposes incompatible with their true purpose.

38. In the system proposed in the amendments there was in fact a stricter limitation on the exercise of preferential fishing rights than there was, for example, in the Cuban draft resolution (A/CONF.19/L.6). That was the faculty of any other State concerned to request that the propriety of exercising preferential fishing rights should be determined by the special commission provided for in article 9 of the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas. If such a State considered that the circumstances justifying the exercise of preferential rights did not exist, it could act to prevent the total catch of a stock or stocks of fish from being reserved to the coastal State until the special commission had made its decision, after hearing both parties and with due regard to all the interests involved, as set out in the new paragraph 9 proposed in the amendments. The substantive difference between the amendments and the original Cuban draft resolution lay solely in the convenience with which the coastal State could exercise its preferential rights, since under the Cuban draft resolution, the propriety of exercising such rights would also be subject to examination by the special commission and to its decision.

39. Another aspect of the amendments was that relating to the criteria to guide the special commission in determining the propriety of preferential fishing rights and the manner in which it would so determine when it considered that the exercise of those rights was in fact justified. The phrase " is greatly dependent " should not be construed in the same way as, for example, the expression " is overwhelmingly dependent " used in the Icelandic amendment (E/CONF.19/L.13). As stated explicitly in the new paragraph 6, the expression should be construed to mean that it would be sufficient if the living resources were of fundamental importance to the economic development of the coastal State or the feeding of its population. It was therefore obvious that the amendments covered not only very special situations, such as that of Iceland, but also any others in which one of the two sets of circumstances referred to existed. For that reason, the amendments allowed for differences in the extent to which various coastal States depended on the fisheries in question. At the same time, the interests of other States were also taken into account.

40. The amendments implied a more flexible system which had been conceived to meet the interests and claims of a large number of non-coastal States, the legitimacy of which the Conference could not disregard. It would be obvious to all that the amendments were the outcome of a lengthy exchange of views among delegations representing differing and often opposing interests. Experience had shown that it was necessary to obtain a rule of law which would not only muster majority support, but would also be accepted by all those whom the rule would affect. A majority would, of course, be sufficient to give it validity, but without general acceptance it would undoubtedly lack that effectiveness which every rule of law should have.

41. All those considerations had prompted the Cuban delegation to co-sponsor a system of preferential fishing rights less favourable to coastal States than that set out in the Cuban draft resolution. What the Cuban delegation regarded as fundamental from the point of view of the special needs and interests of the coastal State, the recognition of its preferential rights, had remained intact, and none of the conditions to which their exercise was not to be subjected entailed any substantial restriction on their enjoyment.

42. He fully concurred with the view expressed by the Brazilian representative during the Conference, who had drawn attention to the significant progress achieved within so short a time by the idea and principle of the interests and special rights of coastal States with regard to the conservation and exploitation of resources of the sea. Hardly five years previously, at the International Technical Conference on the Conservation of the Living Resources of the Sea, held at Rome in 1955, the very notion of the special interest of coastal States had not been considered compatible with the concept then held of freedom of fishing. The International Law Commission and, subsequently, the 1958 United Nations Conference on the Law of the Sea, had substantially revised that concept, and had recognized that coastal States had exclusive rights with regard to the natural resources of their submarine areas and were empowered unilaterally to take conservation measures beyond the territorial sea. The recognition of preferential fishing rights in a form both effective and equitable, as formulated in the amendments, should be the next step forward to be taken by the Conference.

43. Mr. AMADO (Brazil) said that his delegation's purpose in co-sponsoring the amendments contained in document A/CONF.19/L.12 had been to repair the omission from the second proposal adopted by the Committee of the Whole of provisions safeguarding the special position of certain countries for which the exploitation of the living resources of the high seas was of vital

importance. The sponsors had been very careful to limit the recognition of such special situations to cases in which there could be no possible doubt. Accordingly, it would be necessary to establish scientifically the relationship between the requirements and resources of a coastal State seeking priority fishing rights in a zone of the high seas adjacent to the exclusive fishing zones. The proposed text also provided an effective guarantee for other interested States by prescribing appeal to the special commission referred to in article 9 of the Convention on Fishing and Conservation of the Living Resources of the High Seas. Neither the coastal State nor the special commission would be entirely free to assess the actual special situation or special circumstances, since whether the latter existed or not depended on the two basic conditions set out in the proposed paragraph 8.

44. Moreover, the provision concerning "historic" rights contained in the first amendment had the advantage of making such rights more flexible in application.

45. The intention behind the amendments proposed was to satisfy as many countries as possible. His own delegation was very well aware of the absolute necessity of reaching a general agreement, even at the cost of legitimate and important interests, and, at the same time, of the almost insurmountable obstacles in the way of such an agreement because of special cases which did not fit into general formulae. After a month's discussion, which had brought out the practical and imperious realities that participating countries had to consider, it had become obvious that a last attempt must be made to obtain a substantial majority and achieve the result generally expected of the Conference. That was the aim of the amendments. While he knew that the amendments would not win unanimous support, he also knew that many countries intended to support them.

The meeting rose at 1 p.m.

ELEVENTH PLENARY MEETING

Monday, 25 April 1960, at 4 p.m.

President: Prince WAN WAITHAYAKON (Thailand)

Consideration of the questions of the breadth of the territorial sea and fishery limits in accordance with resolution 1307 (XIII) adopted by the General Assembly on 10 December 1958 (A/CONF.19/L.4, L.5/Rev.1, L.6, L.8, L.9, L.11 to L.13) *(continued)*

[Agenda item 9]

1. Mr. VELAZQUEZ (Uruguay) said that his delegation had joined those of Brazil and Cuba in sponsoring amendments (E/CONF.19/L.12) to the second proposal adopted by the Committee of the Whole (A/CONF.19/L.4, annex) because it recognized, albeit with qualifications, the coastal State's faculty of claiming preferential fishing rights in any area of the high seas adjacent to its exclusive fishing zone where the exploitation of the living resources of the high seas was of fundamental importance to it. Acceptance of that principle by the Conference would constitute its most important contribution to the progressive development of the international law of the sea.

2. The fishery resources of the sea areas in question pertained in all justice to the economy of the coastal State. The principle embodied in the three-Power amendments would no doubt require development in the future, but it was important that it be recognized forthwith.

3. The Uruguayan delegation also believed that the adoption of the three-Power amendments would facilitate the Conference's work of formulating a generally acceptable rule on the two questions of the breadth of the territorial sea and fishery limits.

4. Sir Kenneth BAILEY (Australia) said that representatives would have to consider whether it was better to have some rule, even if that rule was not altogether satisfactory, rather than no rule at all, or a disputed or uncertain rule.

5. The Australian delegation supported the joint Canadian and United States proposal because it safeguarded the freedom of the seas and that of the air above the high seas, in which freedoms, as time passed, an increasing number of States would have an interest. Many small States, which at present had no shipping or aircraft of their own, were developing national merchant navies and air services, and they could not fail to appreciate that the greater the area of sea subjected to national sovereignty, the less freedom there would be for their ships and aircraft.

6. It was apparent that, for a great many States, the major interest in extending their maritime jurisdiction lay in securing more extensive fishing rights. If those rights were secured, as the joint proposal sought to do, it made little practical difference to those States whether the territorial sea itself was twelve, six or even three miles broad. If a convention were adopted along the lines proposed by Canada and the United States of America, he believed that the ranks of the parties to it would by no means be limited to those States which supported the joint proposal at the Conference. If a coastal State did not subscribe to such a convention, it would be able to secure a twelve-mile exclusive fishing zone only by the highly contentious, uncertain and costly method of asserting a unilateral claim and then endeavouring to enforce it if it could. He was sure that States would prefer to subscribe to a convention along the lines of the proposal adopted by the Committee of the Whole that would offer them secure rights according to law.

7. The Australian delegation would support the three-Power amendments on preferential fishing rights (A/CONF.19/L.12).

8. With regard to the ten-Power draft resolution (A/CONF.19/L.9), his delegation rejected the assumption therein that it was possible to secure an exclusive fishing zone twelve miles broad without settling the question of the breadth of the territorial sea. Such a hypothesis was both unrealistic and inequitable. Paragraph 3 of the second proposal adopted by the Committee of the Whole represented a very great concession on the part of States whose nationals fished in distant waters off the coasts of other States — a concession

which had been made precisely in order to secure a territorial sea of six miles in the interests of the freedom of sea and air navigation. The States in question could not possibly be expected to renounce outright the right of their nationals to fish in certain areas of the high seas if at the same time the question of the breadth of the territorial sea was to be left unsettled.

9. For all those reasons, the Australian delegation supported the joint Canadian and United States proposal as the only formula on which a convention could be based.

10. Mr. SHUKAIRY (Saudi Arabia) said that, while his delegation sincerely hoped for the complete success of the Conference, it believed that success could only be achieved on the basis of common consent. The problem of the territorial sea had for many years defied solution and it was well to realize the reasons for past failures.

11. Contrary to what the Canadian representative claimed, the six-mile formula offered in the joint Canadian and United States proposal was neither new nor a compromise. So long ago as 1894 the Institute of International Law had considered the desirability of settling the question of the territorial sea by common accord, and in 1895 the Netherlands had suggested to the United States of America that a treaty might be concluded to that end, expressing the belief that territorial waters should from that time on extend to 6 miles. The reply of the United States Government, dated 15 February 1895, indicated that it had considered a six-mile limit acceptable. Moreover, in 1864 the United States Secretary of State had suggested to the British Ambassador in Washington that it might be advisable, by agreement between the Powers, to extend the limit of the territorial sea from three to five miles, in view of the increased range of cannon. Thus, nearly a century ago the United States of America had been in favour of extending the territorial sea beyond three miles for reasons of a military nature. It should also be borne in mind that the breadth of the territorial sea had not then been static, but had been extended as the range of cannon increased. Many countries had long maintained a six-mile territorial sea; Spain, for instance, had been doing so since the eighteenth century. Despite the changed circumstances the United States of America and Canada were now trying to impose a limit of six miles for all time, in the interests of a single group of States, not those of the international community as a whole. No State could be blamed for promoting its national interests, but it was surely more fitting to do so openly than in the guise of service to the international community accompanied by the invocation of principles.

12. The joint proposal was designed to override the interests of other States, and primarily to defeat the efforts of those which advocated a twelve-mile limit. The six-mile formula had been conceived as part of the cold war between the major Powers, and the rest of the world had no choice in the matter. As the *New York Times* had recently stated, the issue involved the vital interests of the United States navy and the submarine strategy of the Soviet Union. For the former country the difference between six and twelve miles of territorial sea was the difference between naval security and naval danger. That such was the real background to the joint proposal had been eloquently demonstrated by the leader of the United States delegation in an article published in October 1958,[1] in which he had summed up the work of the first United Nations Conference on the Law of the Sea. The article had stressed the military implications of an extension of the territorial sea to twelve miles, and had described the defeat of a proposal to that effect as an important United States achievement. Viewed from the same standpoint, the defeat at the present conference of the eighteen-Power proposal (A/CONF.19/C.1/L.2/Rev.1), which defended the interests of a number of African, Asian and Latin-American States, could also be regarded as a United States achievement. Similarly, the adoption by the present Conference of the joint proposal by a simple majority, or even by a two-thirds majority, would be yet a third United States achievement. The concern of the United States Government, and of any other Government, for its country's security was laudable and legitimate; what he objected to was the attempt to harness the entire Conference to the interests and fears of a certain group of States without the slightest regard for the equally legitimate interests and apprehensions of other States.

13. The joint proposal was manifestly one-sided and could not be made a rule of law binding on all nations. Such a rule must be the achievement of the entire Conference, not that of one State Member alone: it must reflect the interests of all States, not those of a single group of States, however numerous or influential they might be. The joint proposal might well secure a two-thirds majority, as the Canadian representative had optimistically predicted, but the true nature of such a majority ought also to be pondered. Some States which had voted against the proposal in the Committee of the Whole were now ready to support it; and a State which itself maintained a twelve-mile territorial sea had indicated that it would abstain from the vote on it. No doubt others too would yield to the pressure brought to bear upon them, although he knew that some delegations had been instructed to vote against the proposal. A convention rooted in such origins, even though signed and ratified, could never become general international law but would remain a simple contract binding only on the signatories.

14. He did not agree with the Canadian representative that a resolution adopted by a two-thirds majority should be accepted by the dissenting minority. International law was a body of rules enforceable only by common consent, which, as Professor Lauterpacht had rightly argued, meant not only the consent of an overwhelming majority but also that those who dissented were of no importance. The thirty-three States which had voted against the proposal in committee could scarcely be regarded as of no importance. The adoption of the proposal by the Conference by a numerical majority would be no more than a propaganda victory, since, under its Statute, the International Court of Justice could only apply international conventions that were expressly recognized by the contesting States. Thus, a convention based on the joint proposal could

[1] "Freedom of the Seas", *Foreign Affairs*, vol. 37, October 1958, No. 1, pp. 83 ff.

never apply to States that maintained a twelve-mile territorial sea as they would not be signatories to it.

15. With regard to the Canadian representative's interpretation of the International Law Commission's conclusions, he wished to emphasize again that the Commission had not expressly favoured a maximum limit of six miles for the territorial sea; it had not declared a three-mile territorial sea to be an established and universally recognized rule of law; and it had not described the extension of the territorial sea to twelve miles as a breach of international law. In 1935 an eminent Australian professor of international law had raised the question whether the Great Barrier Reef, sixty miles off the Australian coast, lay in Australian waters or in the high seas. He also recalled that, in 1926, Professor de Magalhães, of Portugal, a League of Nations expert on the codification of international law, had opposed the idea of two different zones, as envisaged in the joint proposal, favouring a single twelve-mile zone of territorial sea.[2]

16. In conclusion, it was obvious that the Conference was deeply divided on the question of the territorial sea, and that any attempt to force the issue could only heighten international tension. His delegation firmly believed in general agreement and therefore appealed to the Conference not to take a hasty decision on a matter which had been at issue for many years, but to defer final action until a more favourable atmosphere prevailed, thus prudently leaving the way open for future efforts to reach a universally acceptable agreement.

17. Mr. GARCIA SAYAN (Peru) introduced the Peruvian draft resolution (A/CONF.19/L.5/Rev.1), the purpose of which was to grant recognition, in exceptional cases, to the coastal State's preferential right to exploit the fishery resources of the seas off its coasts.

18. Both the concept of exceptional cases (or special situations) and that of the preferential right of the coastal State had gained a considerable measure of recognition both at the first United Nations Conference on the law of the Sea and at the present Conference. The first Conference had adopted a resolution on special situations relating to coastal fisheries [3] and the present Conference had before it, in addition to the Peruvian draft resolution, three other texts which sought to give recognition to the preferential fishing rights of the coastal State.

19. International law had always aimed at the formulation of uniform rules applicable to all States. It was not, however, incompatible with that aim to formulate rules in such a way as to make it possible, when applying them, to adapt them to the special circumstances of certain States. By way of analogy, he drew attention to the Constitution of the International Labour Organisation which gave clear recognition, in article 19 relating to the formulation of International Labour Conference conventions and recommendations of a general nature, to the principle of special circumstances or exceptional situations.

20. Physical and biological conditions differed widely from sea to sea, and the problems faced by the inhabitants of the various coastal States were equally diverse. In that connexion, paragraph 5 of the commentary to article 53 of the International Law Commission's articles,[4] which referred to the questions raised by certain States " based on the concept of vital economic necessity ", was pertinent. The Commission had recognized that the proposals made in that regard " may reflect problems and interests which deserve recognition in international law ". The Commission had then gone on to say: " However, lacking the necessary competence in the scientific and economic domains to study these exceptional situations adequately, the Commission, while drawing attention to the problem, refrained from making any concrete proposal."

21. The first United Nations Conference on the Law of the Sea had not had at its disposal the necessary information to study the special situations brought to its attention. As a result, the recognition of the special interest of the coastal State had been illusory: the terms of the Convention on the Territorial Sea and the Contiguous Zone adopted in 1958 had reduced the coastal State to the status of a junior partner in all those cases in which nationals of other States fished in the waters off its coasts. Where resolution VI was concerned, it was drafted in such restrictive terms that it seemed intended to safeguard not so much the interests of the coastal State as those of other States fishing in the sea areas in question.

22. As for the present Conference, the Peruvian delegation still believed that it had been convened in undue haste and that its task had been hampered by the absence of adequate preparatory studies, especially of the scientific and economic aspects of special situations.

23. In spite of that lack of preparation, there could be no doubt that the principle of the preferential rights of the coastal State in exceptional cases had won a substantial measure of recognition in the Conference, which now had four proposals on the subject before it. The Peruvian draft resolution gave the widest recognition to those rights. The three-Power amendments (A/CONF. 19/L.12) to the second proposal adopted by the Committee of the Whole were the most limited. The Icelandic amendment (A/CONF.19/L.13) occupied an intermediate position, and the Peruvian delegation would vote for it, although it did not approve of the application of the provisions of articles 9 and 11 of the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas to the settlement of disputes in the matter.

24. His delegation considered that the coastal State's rights were inherent in its geographical position, and were therefore pre-existent to any claim made before the international community. It was by virtue of the geographical principle of contiguity that, at the 1958 Conference, the sovereignty of the coastal State had been recognized over the continental shelf, a recognition which benefited different States in a very unequal manner.

25. A distinction should be drawn between the freedom of the seas properly so-called and the freedom to fish

[2] League of Nations publication, 1927.V.1, p. 65.

[3] *Official Records of the United Nations Conference on the Law of the Sea*, vol. II, annexes, document A/CONF.13/L.56, resolution VI.

[4] *Official Records of the General Assembly, Eleventh Session, Supplement No. 9*, p. 35.

in the high seas. The latter had never gained the same recognition as freedom of navigation. It was unthinkable that, in the name of the freedom to fish and hunt in the high seas, certain large undertakings should be free to exploit, and possibly deplete, the living resources of the seas off the coasts of a State which vitally needed those resources to feed its people and support its economy.

26. The measures taken since 1947 by Peru and the other Latin-American States bordering on the South Pacific Ocean had been inspired by the terms of the two proclamations made by President Truman in 1945, one of which had unilaterally declared the right of the United States of America to establish conservation zones to protect the fishery resources of areas of the high seas contiguous to its coasts. The distance of 200 miles proclaimed by the Latin-American States had not been chosen arbitrarily: it corresponded to the outer limit of the Peruvian current, which had a decisive influence on the living resources of the sea areas affected.

27. He recalled Peru's peculiar circumstances. Guano, produced by sea birds which fed on fish, provided the country with 90 per cent of its needs in fertilizers. Overfishing, which threatened to deplete the stocks of fish on which the sea birds depended, could thus have disastrous effects on Peruvian agriculture unless appropriate conservation measures were adopted. Much of Peru was desert, mountain or jungle, so that there had been only 0.17 hectares of cultivated area per head of population in 1956; the figure had been 0.23 hectares in 1938, but had declined over the past twenty years as the population had increased. The average daily calorie intake in Peru was 1,900 as compared with the recommended 2,900. Moreover, the population was expected to increase from the present 10 million to some 20 million by 1980.

28. In the face of that appalling need for food, the only compensation offered by nature was the existence of ample fisheries. Great efforts had been made to develop those resources, and a modern fishing industry had been built up within the past twenty years. In 1958 Peru had produced more than 900,000 tons of fish, a figure which made it the first fishing nation in Latin America and probably the fifth in the world. Great efforts were also being made to increase the consumption of fish, and, while it was difficult to change dietary habits in areas far from the coast, consumption in Lima, the capital, which had more than a million inhabitants, had risen to 16.3 kg per head in 1950, a higher figure than that for the United States of America.

29. Peru was also making scientific studies of the living resources of the sea and had been granted assistance from the United Nations Special Fund to establish an institute with those objects.

30. The Peruvian draft resolution had been based on Peru's special circumstances, but it was drafted in sufficiently general terms to be of benefit to any country which was, or might in the future be, in a similar position. Moreover, it made the recognition of the preferential rights of the coastal State conditional upon that State's supplying scientific evidence of the existence of special conditions by means of technical, geographical, biological and economic studies and surveys, which would have to be prepared in collaboration with the appropriate specialized agencies of the United Nations. Thus it adequately safeguarded the rights of all other States against possible abuse by the coastal State of its preferential rights.

31. Although his delegation was not satisfied with the terms of the three-Power amendments, which would be put to the vote before the Peruvian draft, it would not vote against them. The reason for its decision was that it was prepared to favour any step taken in the direction of the recognition of the principles embodied in its own draft, which were consistent with the present trend towards the extension of the jurisdiction of the coastal State in keeping with the dictates of justice and equity and with the evidence yielded by scientific progress.

32. Mr. SÖRENSEN (Denmark) said that, despite some points of difference, which no one would wish to underestimate, a surprisingly wide area of agreement could be discerned at the Conference, if its deliberations were impartially viewed in the light of previous discussions on the law of the sea. The United Nations was not bound to the principle of unanimity, as had been the League of Nations and the international community of the nineteenth century, but had accepted the democratic principle of the two-thirds majority, which had already been referred to as an element of progressive development in the legal structure of the international community. Although there was little hope of adopting a convention that would be immediately acceptable to all States, there seemed to be good reasons for going as far as was possible under the present rules of procedure. Provisions which could now command the required majority might in time appear less objectionable to the dissenting minority.

33. Agreement was particularly marked in the matter of fishing limits, on which Canada, the United States of America and the United Kingdom had moved from their initial positions and found common ground. His own delegation had come to the Conference with instructions to support a twelve-mile fishing limit, as embodied in the original Canadian proposal (A/CONF.19/C.1/L.4), but in view of the efforts made by other delegations to reach a compromise, his Government's desire to contribute to the success of the Conference had prevailed over its preference for a twelve-mile fishery limit and it had accepted the joint Canadian-United States formula. As situations and conditions varied greatly throughout the world, it would clearly be unrealistic to seek to impose a single rule of universal application, and the joint proposal introduced an element of flexibility and differentiation which would avoid the sudden disruption of existing patterns of fishing while meeting the reasonable long-term needs of most coastal States.

34. Some of the recently submitted proposals carried that tendency still further. The amendments submitted by Brazil, Cuba and Uruguay (A/CONF.19/L.12) attempted to strike a fair balance between conflicting interests when it became necessary to limit the total catch of a stock of fish, and thus covered much the same ground, although in more specific terms, as the Icelandic proposal (A/CONF.19/C.1/L.7/Rev.1) adopted by the Committee of the Whole, which the Danish delegation also had supported. The amendments also made provision for special arrangements by bilateral, multilateral or regional agreement concerning traditional fishing rights in the outer zone.

35. His delegation welcomed the provision in the new joint Canadian and United States proposal (A/CONF. 19/L.11) for special fishing agreements, as Denmark was party to a number of such agreements with its neighbours. In special situations, where a people was overwhelmingly dependent on fisheries for its livelihood and economic development, foreign fishing States might agree to relinquish their historic fishing rights forthwith or to claim them only for a period shorter than ten years. Denmark was responsible for the welfare of two such peoples: in the case of Greenland present fish stocks were sufficient to allow the recognition of traditional fishing rights in the ten-year period; in the case of the Faroe Islands, where only the United Kingdom could claim traditional rights, the local Parliament had expressed itself in favour of the immediate introduction of a twelve-mile fishing limit without recognition of traditional rights. He was convinced, however, that the latter issue could be satisfactorily settled by negotiation, and he would like to pay a tribute to the sympathetic understanding shown by the United Kingdom Government and the readiness with which it had agreed to a special arrangement within the framework of the Canadian-United States formula.

36. His delegation had certain doubts about the merits of the ten-Power draft resolution (A/CONF.19/L.9), which failed to provide for traditional fishing practices to continue in the twelve-mile exclusive fishing zone during a transitional period, and thus did not take sufficient account of the many and varied interests at stake. Furthermore, the words " *Recognizes* that . . . any State is entitled to exercise . . ." could be taken to imply that a rule of law existed before the adoption of the proposal, whereas it had been made clear at the Conference that the special fishing zone was a novel concept in international law. Those words could also be interpreted as an expression of what would thenceforth be a rule of international law; but the Conference had no legislative powers and could only establish new rules of international law by drawing up a convention for ratification by each country in accordance with its constitutional procedures. A resolution purporting to recognize a rule of international law would be legally binding only if it expressed the consensus of opinion on a matter in which state practice was already uniform. That was not so in the case of the twelve-mile fishing zone. His Government viewed with favour the establishment of a twelve-mile fishing zone as a progressive development in international law, but that development was too important to be produced by a mere resolution of dubious legal effect. Lastly, paragraph 2 of the operative part of the ten-Power draft resolution was objectionable in so far as it discriminated against old States.

37. His delegation would vote in accordance with the foregoing considerations.

38. Father DE RIEDMATTEN (Holy See) said that his delegation was convinced that the Conference was in duty bound to reach a result applicable and acceptable to all nations, and that if it failed the confidence placed by the peoples in international organizations would be badly shaken. Furthermore, it was upon the solution of the problems on the agenda of the present Conference that the ratification and entry into force of the instruments adopted by the 1958 Conference ultimately depended, and it was because of that close link between the work of the two Conferences that the Holy See had felt obliged to take part in the second one, although it had no direct interest in the questions of the territorial sea or fishery limits. His delegation had abstained from voting in the Committee of the Whole because it had considered that none of the texts proposed was likely to win wide enough support. But that stage was now past, and the Conference had before it texts which would enable it to reach a successful conclusion without anyone being too seriously injured by its decisions.

39. In recognizing that each coastal State was entitled to extend its territorial sea up to a distance of six miles and in particular had exclusive fishing rights over the twelve miles of sea adjacent to its shores, the Conference would be profoundly modifying the present status of maritime areas, and would be promoting the attainment by all peoples of broad political and economic autonomy. That was a bold enterprise, which presupposed a confident view of the future. The delegation of the Holy See would vote for that formula, and considered that the peoples in process of expansion had nothing to fear from its adoption. The draft resolution concerning technical assistance submitted by Ethiopia, Ghana and Liberia (A/CONF.19/L.8) was a natural corollary to it.

40. There would then remain the serious problem of special situations. Of the proposals submitted since the Committee of the Whole had finished its work, there was at least one which offered a reasonable compromise. The delegation of the Holy See would not have been opposed to the restatement of a restriction concerning so-called historic waters, but it felt that the texts adopted in 1958 were sufficiently clear in that respect. The solution proposed endeavoured to reconcile the coastal State's right to the waters adjacent to its territory with the necessity for establishing a final demarcation line between the territorial sea and the high sea. If the Conference accepted that solution, many established situations would be modified, and a number of countries would be obliged to impose sacrifices on certain sections of their population, many of them people of modest means. The international community should be careful to avoid causing complete upheaval in the fishing industry. On the other hand, by starting the transitional period not on the date of entry into force of the new convention, but at a date very close to that of its signature, the Conference would be safeguarding the beneficiaries of the new provisions against any danger of endless delay in the execution of the agreements. It was to be hoped that the transitional period would witness the inception of fruitful collaboration between the usufructuary of tomorrow and the operator of today, and lead to the conclusion of those bilateral, multilateral and regional agreements that were the natural corollary to the general rules which the Conference was called upon to lay down.

41. Mr. HARE (United Kingdom) said that the atmosphere of steadily increasing goodwill at the present Conference was one in which the United Nations could rightly be expected to achieve useful results. Many of the nations represented had clearly recognized that each side would have to make some sacrifice if common agreement was to be reached, and those who argued that, having unilaterally established a twelve-mile

régime, they could not now depart from it, were in effect demanding that the majority submit to the veto of a minority. Such an attitude would ultimately destroy the principles on which the United Nations itself was founded, since peace and good will could become reality only if the spirit of give and take was also real and not merely a pious expression of hope.

42. The United Kingdom would vote against the ten-Power draft resolution (A/CONF.19/L.9), which sought to put off indefinitely a decision on the breadth of the territorial sea. All delegations were clearly aware of the issues, and it was the duty of the Conference to take its decisions forthwith.

43. The Icelandic amendment (A/CONF.19/L.13) to the second proposal adopted by the Committee on the Whole, by eliminating the ten-year period allowed to distant-water fishing States for the readjustment of their fishing industries, would undermine the very principle on which the proposal was based, since other States might well demand the same treatment. Had there really been an imminent shortage of fish in the seas around Iceland, such an amendment might have been justified, but scientists did not agree that the cod catch had reached its limit, and considered that it could still be safely increased, given proper regard for conservation. All the countries which fished off Iceland, including the United Kingdom and Iceland itself, were members of the International Union for the Conservation of Nature and Natural Resources, which could institute any conservation measures that proved necessary.

44. His Government recognized that both Iceland and the Faroe Islands presented special problems, and he was glad to inform the Conference that, as a result of talks between the Danish representative and himself, the Danish and United Kingdom Governments were satisfied that they could reach a sensible and fair agreement whereby the ten-year rule would be adjusted to meet the special situation of the Faroes. He had also approached the representative of Iceland with a proposal for limiting the ten-year rule in Iceland's favour. His efforts had, however, been unsuccessful, and his Government was prepared to refer the problem to some mutually agreed impartial authority for adjudication. If the Icelandic delegation would accept that offer and agree to abide by the award, his own Government would undertake to do the same. If the joint proposal was adopted and Iceland accepted his offer, that country would have an exclusive twelve-mile fishing zone after a period of probably less than ten years, and would also enjoy the protection of the Convention on Fishing and Conservation of the Living Resources of the High Seas. It would also be able to establish claims for preferential fishing rights beyond twelve miles, if the amendments of Brazil, Cuba and Uruguay (A/CONF.19/L.12) were adopted. The idea of reaching a settlement by the decision of an impartial authority was very much in line with those amendments, which his delegation would support, although its acceptance would mean that his own country and many others would have to face the possibility of losing still more sea areas traditionally fished by their peoples. The amendments proposed to deal in a sensible and practical way with the problem of special situations within the framework of an international rule of law; an internationally constituted and recognized body would assemble and assess the relevant facts and arbitrate between the interests of coastal and fishing States.

45. His delegation would also support the draft resolution submitted by Ethiopia, Ghana and Liberia (A/CONF.19/L.8) on technical assistance, which it regarded as imaginative and constructive.

46. The United Kingdom had supported the proposal submitted jointly by Canada and the United States in the Committee of the Whole, despite the loss its provisions would entail for his country's fishing industry, and would support the new joint proposal (A/CONF.19/L.11) for the reasons it had given in committee. The vote in committee had clearly shown that the proposal was the only one likely to succeed, and it had since then attracted further support.

47. The issue at stake was whether there would be a law of the sea which all nations could agree to observe in future, or whether chaos was to be allowed to persist, and he therefore appealed to any delegation whose mind was not yet made up to consider the grave consequences of the second alternative. Failure to reach agreement would do grievous harm to the United Nations and to all the principles on which it had been founded.

Expression of sympathy for victims of the earthquake in Iran

48. The PRESIDENT expressed to the Iranian Government and people and to the inhabitants of the stricken town of Lar the sympathy and condolences of the Conference, all members of which had been profoundly shocked by the news of the earthquake which had just devastated that place.

49. Mr. MATINE-DAFTARY (Iran) warmly thanked the President for his expression of sympathy in the disaster which had plunged Iran into grief and anxiety.

The meeting rose at 7.50 p.m.

TWELFTH PLENARY MEETING

Monday, 25 April 1960, at 9.15 p.m.

President: Prince WAN WAITHAYAKON (Thailand)

Consideration of the questions of the breadth of the territorial sea and fishery limits in accordance with resolution 1307 (XIII) adopted by the General Assembly on 10 December 1958 (A/CONF.19/L.4, L.5/Rev.1, L.6, L.8, L.9, L.11 to L.13) *(continued)*

[Agenda item 9]

1. Mr. DEAN (United States of America) said that he wished to express the appreciation of the Canadian and United States delegations for the support given to their joint proposal (A/CONF.19/C.1/L.10) in the Committee of the Whole. He realized, of course, that a number of countries had found difficulty in voting for a compromise

proposal which had not contained all the provisions they would have wished the Conference to adopt. Since the adoption of that proposal many delegations which had abstained and many which had voted against it had advised the United States delegation that they were now in favour of the new joint Canadian and United States proposal (A/CONF.19/L.11). That had confirmed his belief that the basic features of the proposal with respect to the territorial sea and fishery limits were those which were alone capable of adoption by the Conference as a general rule of law.

2. The joint Canadian and United States proposal adopted by the Committee of the Whole and the new proposal submitted to the plenary meeting were basically alike in that each would provide for a maximum six-mile territorial sea; they would accord to the coastal State exclusive jurisdiction over fishing in a contiguous zone extending twelve miles from the baseline, so that for most coastal States that exclusive twelve-mile fishing jurisdiction would be immediate and would be a net gain of nine miles; and, in other cases, where vessels of foreign States had made a practice of fishing in the outer six miles of such zone in a five-year base period from 1953 to 1958, both proposals allowed such vessels to continue to fish in the outer six-mile zone for a period of ten years.

3. The relatively brief ten-year period was intended to give fishing States time to make the inevitable economic and human adjustments necessitated by the loss of fishing grounds, in many cases used for countless generations. At the end of the ten-year period, the coastal State would have exclusive fishery jurisdiction, unless it entered into bilateral or multilateral agreements making other arrangements.

4. The new proposal embodied, however, certain changes of detail. They were changes in a compromise proposal and had been negotiated in such a way that all the various features must be kept as part of a single package.

5. The revisions incorporated in the new proposal, which should likewise be accepted as a whole, were the precise definition of the term " nautical mile "; the clarification of the nature of the contiguous fishing zone as part of the high seas beyond the six-mile territorial sea, consistent with the definition of the term in article 1 of the 1958 Convention on the High Seas; the specific reference to articles 9 and 11 of the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas; and the restriction of the disputes to be settled by the procedure set forth in paragraph 4 to those arising out of paragraph 3. In addition, a new paragraph had been added, making clear the relationship of existing or future bilateral or multilateral agreements to the proposal.

6. He emphasized that the sponsors intended that, although the coastal State would possess " jurisdiction " over fisheries in the outer six-mile zone, the coastal State would not be at liberty in the interim ten-year period to act in any way that diminished or rendered ineffective the fishing rights continued by paragraph 3 of the proposal by regulation, or to attempt to make such foreign fishing in the outer six-mile zone comply with domestic regulations incompatible with the fishing rights granted during that period. It should also be clear that the effect of the proposal was to except the juridical status of historic waters.

7. A problem of concern to a number of delegations was that there were or might be special situations in which a coastal State should enjoy preferential fishing rights extending beyond the area twelve miles from shore. Several proposals to that effect had been submitted to the Conference. If such preferential rights were to be generally acceptable, however, they would have to be defined in such a way that the definition would meet the legitimate needs of certain coastal States and would not lend themselves to arbitrary or purely unilateral acts by the coastal State. Any failure to define them in that way might lead to manifold disputes. The United States delegation had acknowledged that exceptional situations of overwhelming dependence on coastal fisheries existed, and that those situations should receive sympathetic and careful consideration. They might require an exception from the general formula applicable to the territorial sea and fishing limits.

8. The constructive amendments submitted by Brazil, Cuba and Uruguay (A/CONF.19/L.12) were therefore to be welcomed. They would strengthen the joint Canadian and United States proposal, and he would urge all delegations to support them.

9. The Icelandic proposal (A/CONF.19/L.4, annex, first proposal) and the Peruvian draft resolution (A/CONF.19/L.5/Rev.1) were less comprehensive; the United States delegation would therefore oppose them, as it must oppose the Icelandic amendment (A/CONF. 19/L.13) to paragraph 3 of the joint proposal. It had been very clear throughout the Conference that the most difficult task would be to find a general rule which could cover the wide variety of individual fishing interests. Fully to satisfy each individual case would make agreement impossible. The joint Canadian and United States proposal, with the joint amendments, went as far as any general rule could to meet the admittedly difficult problems of States such as Iceland. Any further relief for Iceland might best come from bilateral or multilateral arrangements between the States concerned, and it was gratifying to learn that negotiations between Iceland and the United Kingdom were apparently progressing. Such a solution was now specifically referred to in paragraph 5 of the Canadian and United States joint proposal.

10. The United States delegation heartily supported the draft resolution by Ethiopia, Ghana and Liberia (A/CONF.19/L.8). Those delegations were to be commended for drawing attention in a constructive and helpful manner to the need for technical assistance. Many of the existing differences among countries on the questions of fishery limits were the reflection of differences in their ability to exploit the living resources of the sea. It was gratifying to find that many other delegations had contributed to that well-conceived and well-drafted proposal.

11. As he had stated in the Committee of the Whole, the United States would prefer that a three-mile territorial sea, without a contiguous fishing zone, should continue as international law, since it would be to the best interests of all nations, by preserving the greatest possible freedom of the high seas. In recent years,

however, the questions of the breadth of the territorial sea and fishery limits had become the subject of controversy and dispute, much of which was irrelevant to the Conference's discussions. Progressively and in a co-operative spirit, labouring to reach a sound and workable agreement, the great majority of Governments had, however, re-examined the nature of the final proposal they were prepared to accept. The United States Government was now proposing or supporting international agreement on the issues before the Conference on a basis far removed from its own preference for a three-mile territorial sea and very far removed indeed from its own economic interests. If that effort were a move in the so-called " cold war ", it was difficult to see why the United States delegation had ever put forward such a proposal.

12. The United States delegation had made concessions where possible each step of the way to achieve a greater and wider measure of agreement, but unfortunately some other delegations had made no concessions and had continued to adhere to proposals which would permit the unilateral extension of the territorial sea. Some countries had unilaterally fixed the limits of their territorial sea and had stated that they would pay no attention even if a two-thirds majority of the Conference declared that such action was wrong.

13. The original eighteen-Power proposal (A/CONF.19/C.1/L.2/Rev.1) had now been brought forward again as a ten-Power draft resolution (A/CONF.19/L.9). Although presented in the form of a draft resolution, it was in fact a proposal which dealt with the very substance of the problem, but avoided the most important question, that of the breadth of the territorial sea, by merely stating that " there still exists wide disagreement on the question ".

14. Under operative paragraph 3 of the ten-Power draft resolution the Conference would recognize that a State was entitled to exercise certain rights, thereby *ipso facto* recognizing a twelve-mile exclusive fishing zone. The sponsors described that action as a progressive development of international law, a statement surely not in accordance with the facts. Under operative paragraph 2 certain States which had become independent before 24 October 1945 would be requested to refrain from extending their present territorial seas. Whatever their present breadth of territorial sea might be, however, the draft resolution would not by its terms alter it. At the same time, it would confer on other States which had gained their freedom since the United Nations Charter had come into effect complete freedom to fix the limits of their territorial sea at twelve miles, or, for that matter, so far as the text of that curiously worded draft resolution was concerned, at any distance beyond twelve miles.

15. Although the Conference's purpose was to reach agreement on a unified rule of law with respect to the territorial sea, the proposal asked it to deny the very purpose for which it had been called and to adjourn in admitted failure even before attempting to reach agreement. Though called conciliatory, that was a conference-wrecking proposal. It did not express the prevailing spirit of the Conference which aimed at reaching a successful conclusion by adopting a true compromise proposal, fair to both the coastal and the fishing States—namely, the joint Canadian and United States proposal. The ten-Power draft resolution was grossly discriminatory. Some twenty-three nations had become independent since 24 October 1945. Each was now a welcome member of the community of nations, but it was more than doubtful that they would seek or wish to be treated differently from others. A proposal assuming that agreement on the territorial sea and fishery limits could not be reached at the Conference was contrary to the plain evidence. It did not recognize the fact of the widespread feeling that agreement could and would be reached on the basis of the joint Canadian and United States proposal. The Conference would, in his opinion, reach agreement, and the great majority of delegations would continue to be motivated by that spirit of compromise, fair play and conciliation which had prevailed so far. The vote would, he believed, be a landmark in the history of international law and in the settlement of international differences through a process of patient, constructive and peaceful compromise. It would constitute a real answer to those who claimed that United Nations procedures were too cumbersome, and that some other solution must be sought.

16. On various occasions speakers had referred to treaties to which the United States was a Party, and had placed interpretations on them at variance with the official United States position and with the facts. Other statements had been made with respect to matters not before the Conference which had been contrary to official United States views. The United States delegation had not considered it necessary or desirable from the standpoint of orderly debate to enter into a discussion of extraneous matters. It merely wished to say that its silence was not to be construed in any way as acquiescence in any views stated at the Conference which were inconsistent with the official position of the United States Government and already made known, in most instances, to the Governments concerned through the diplomatic channel.

17. The joint proposal was sponsored by the Canadian and United States delegations, but many other delegations were entitled to share the credit. He wished particularly to express the United States delegation's sincere appreciation of the efforts of all those delegations whose work had led to a positive and constructive outcome of the Conference's work.

18. Mr. GARCIA AMADOR (Cuba) explained that he had not withdrawn the original Cuban draft resolution (A/CONF.19/L.6) and would not consider doing so until the result of the vote on the amendments submitted by Brazil, Cuba and Uruguay (A/CONF.19/L.12) to the second proposal of the Committee of the Whole was known. It should also be noted that the amendments related to the proposal as approved in Committee, not to the new proposal by Canada and the United States (A/CONF.19/L.11).

19. Mr. SEN (India) said that he was fully conscious of the gravity of the situation and that the Conference had reached a crucial stage, and he realized the difficulties that the Indian delegation's stand might create. He had listened with the utmost interest to the statement of the United States representative, and sincerely wished that it might be possible for the Indian delegation to respond

to his passionate plea. It would certainly be desirable to support the only general proposal reported by the Committee of the Whole to the plenary meeting; but that was impossible. He was deeply sorry that, despite the Indian delegation's efforts, no reconciliation had been achieved between the advocates of the twelve-mile territorial sea and the supporters of the six-mile plus six-mile formula.

20. The twelve-mile limit was the vital factor. Its proponents did not wish to enlarge the territorial sea for its own sake, but because they still had every reason to harbour the apprehensions which had been repeatedly expressed during the Conference. All delegations were aware that the difficulties in the way of the freedom of navigation could easily be disposed of by conceding the right of innocent passage, so far as merchant ships and aircraft were concerned, even if the territorial sea extended to twelve miles. The difficulty arose only when the right of innocent passage for warships was involved. The small countries feared encroachments by foreign warships coming into their adjacent waters and remaining there for long periods. That was why they were anxious to exercise in a twelve-mile zone the right to control foreign warships when necessary, which they could do, in the present state of international law, only within their own territorial sea. Coastal States could not be expected to make concessions where their security was involved, and non-coastal States had nothing to lose and everything to gain by recognizing the genuine apprehensions harboured by the coastal States.

21. If the right to control the movement of warships had been conceded, it might have been possible to accept the joint Canadian and United States proposal. India would have been willing to abandon certain rights in the twelve-mile territorial sea and achieve a compromise, while leaving the coastal States full territorial rights in a twelve-mile zone which left the outer six-mile zone completely free for navigation by foreign merchant ships and airlines. The Indian delegation had, however, refrained from making a formal proposal to that effect, as it would only have raised fresh controversies.

22. The Indian delegation appreciated the efforts at compromise made by the maritime Powers, which had been actuated sincerely by the desire to reach a decision. Unfortunately, there had been no prospect of such a decision being unanimous. It was to be hoped that continuing efforts would be made to find a solution, and that the good sense of all States would eventually lead to an agreement, without which the creation of international law was impossible. International law could be created only by free assent, never by numerical majorities.

23. Mr. TUNKIN (Union of Soviet Socialist Republics) said the time had come to weigh up the situation. The results of the vote in the Committee of the Whole had shown that thirty-six delegations were in favour of establishing a twelve-mile territorial sea and fishing zone. Although thirty-six votes did not represent a majority, that state of affairs was highly significant from the historical point of view. At the time of the Codification Conference at The Hague in 1930 no one would have believed that thirty years later such a large percentage of participants would express a preference for a twelve-mile limit. The Canadian and United States proposal in the Committee had received 43 votes, a majority of the delegations voting, but not a majority of the participants in the Conference. Moreover, if allowance were made for the countries which were unfortunately not represented — through no fault of their own — it became obvious that there was even less support for the six-mile limit than the vote suggested. It had been said at the time of the vote in the Committee that the positions then taken by States was merely preliminary. In his delegation's opinion, however, the results obtained in the Committee could not be regarded as fortuitous. Two years had elapsed since the 1958 Conference, during which period certain States which wanted the second Conference to be held as soon as possible had made every effort, through the diplomatic channel and special missions, to influence other States in favour of their proposals. Despite all those efforts, however, the proposal had gained less than one-half of all the possible votes in the Committee. The pressure had since been intensified, and all available means were being used to secure the two-thirds majority.

24. His delegation had been most unfavourably impressed by the situation which was revealed in the Iranian representative's statement at the 10th plenary meeting. The announcement that Iran, which had established a twelve-mile territorial sea, would abstain from voting was evidence of the distortion of the free will of a sovereign State. The tactics that had been employed to bring about such results were based on the all too familiar notion that in international relations power and only power should be relied upon and used to force other States to accept certain conditions. Rules of international law must be created by agreement between States, arrived at through the free expression of opinion by the participants. The method of relying on power was obsolete; the days when a certain group of States could presume to dictate international law to others had passed, and any such attempts were doomed to failure, in addition to aggravating the international situation. Some representatives had urged the minority to heed the decision of the majority; but it had been proved in the Committee of the Whole that thirty-six States were in favour of a twelve-mile limit. If the People's Republic of China, which had established a twelve-mile limit, were also taken into account, the population of the countries in favour of that limit would amount to 1,700 million, or over 60 per cent of the world's population. Even leaving that argument aside, the main point was that problems of international relations were not settled by majority votes. If the joint Canadian and United States proposal were adopted by a two-thirds majority, it would still not be binding upon States. In order to become a rule of international law, such a decision would have to be signed and ratified. A disadvantage of the two-thirds majority rule was that it provided a temptation to seek a numerical majority instead of wider agreement.

25. The Australian representative's statement at the 11th plenary meeting had confirmed once again that the advocates of a six-mile limit did not dare to announce their real reasons for not agreeing to a twelve-mile limit, as was proved by the withdrawal of the amendments proposed by Ghana (A/CONF.19/L.10) to the second proposal adopted by the Committee. The provision that no State was entitled to enter the outer zone of another State by means of a warship or the superjacent air-space

by any military aircraft without prior notification to that State, although relatively mild, had been unacceptable to the Canadian and United States delegations and had consequently been withdrawn. The United States representative had tried to prove that the interests of other States were taken into account in the joint proposal, and had complained that the advocates of the twelve-mile limit had proposed no compromise. He had failed to explain, however, that the United States and its supporters only wished to compromise at the expense of States with a twelve-mile limit, which were legitimately anxious to secure the inviolability of their shores and the protection of their own fisheries.

26. The Conference had reached a stage at which the correct course was obviously to take the longer but surer path, and not to aggravate, but to relax international tension; the adoption of the Canadian and United States proposal, on the other hand, was bound to introduce a schism into international law and to increase international friction. The best way out was offered by the ten-Power draft resolution (A/CONF.19/L.9), which postponed the settlement of the question of the breadth of the territorial sea, but made some temporary provisions pending such a decision. Its chief advantage was that it opened the door to further efforts to achieve wide agreement on the questions before the Conference and, as the deliberations had shown, perhaps on some other outstanding problems as well.

27. Mr. GROS (France), while wishing to explain the reasons underlying the French delegation's position, thought that at that stage in the proceedings the debate should be raised to a somewhat higher level.

28. In 1958 forty-five States, representing the majority of the Conference, had expressed their consent to the adoption of a breadth of six miles for the territorial sea and of a six-mile zone in which fishing rights would not be reserved exclusively to the coastal States but would be shared among them and other States. Those forty-five States had found it fair that satisfaction should thus be given at the same time to the coastal States and to the States which traditionally engaged in distant-water fishing. Since the 1958 Conference the situation had developed rapidly. The Governments of the forty-five States, although representing a majority, had agreed to make a first concession—namely, that fishing in the belt between the six-mile and twelve-mile limits should be restricted to the present level. That was an important restriction, which represented a considerable sacrifice on the part of the fishing States. The delegations of the States which applied or claimed a twelve-mile limit had made no effort to change their position, confining themselves merely to criticising the position of other States. The latter, anxious to work out a generally acceptable solution, had then agreed to a second sacrifice by supporting the joint Canadian and United States proposal.

29. It was curious that, both in 1960 and in 1958, it was always the same States that were prepared to make sacrifices. In that connexion he recalled that an author often quoted at the Conference, Professor Gidel, had said that general agreement could not be reached within a reasonably short time on the breadth of the territorial sea except through acceptance of the contiguous zone; in that way it would be possible (according to Gidel) to satisfy those whom a uniform breadth of the territorial sea (sufficiently narrow to be generally acceptable) would leave without adequate protection. After more than thirty years Professor Gidel's remarks remained profoundly true. They explained why forty-five States, at least, were always prepared to make concessions in order to reach general agreement. For the same reasons, the French delegation would be unable to vote in favour of the ten-Power draft resolution (A/CONF.19/L.9), the object of which was to secure recognition for exclusive fishing rights up to a distance of twelve miles from the coast. Actually, there was no contiguous zone in the matter of fisheries. At the 2nd meeting of the Committee of the Whole, the USSR representative had said that the breadth of the territorial sea and of the fishing zone were two inseparable concepts. That was true, for a contiguous zone could only exist if there was a definite territorial sea; it did not exist in the abstract but was merely an extension, a complement of the territorial sea, justifiable only to the extent that a particular State might need to protect certain recognized interests beyond its territorial sea; and fishing was not yet recognized as forming part of those interests. To recognize it, agreement would have to be reached at the same time on a reasonable territorial sea.

30. The States which engaged in fishing in distant waters had consented to pay a high price for agreement, but they expected that, in return, agreement on the territorial sea would materialize. Yet such agreement did not exist because the delegations which supported the ten-Power draft resolution had pressed for the recognition of a twelve-mile territorial sea. There were two parties — a minority which urged the case for a breadth of twelve miles and a majority which looked for an agreement. The ten-Power draft resolution took for granted the concessions which the majority offered in order to reach such an agreement. The sponsors and supporters of the proposal would not retreat from their initial position, but expected at the same time to receive the benefit of the concessions held out by the other States. History would decide who, at the Conference, had tried to contribute to a *détente*. If the States which engaged in distant-water fishing agreed to vote for the ten-Power draft they would be surrendering their fishing rights in a twelve-mile zone. Later, in five or six years' time, the minority would return to the charge and would insist that the twelve-mile limit should be recognized as the only valid limit for territorial waters also. In fact, the ten-Power draft resolution offered no attraction whatever to the fishing countries. In that connexion he added that it was not, as had been asserted, large companies that would be affected by such a change in conditions but, in France, the interests of 55,000 small fishermen and, in other countries also, the interests of thousands of fishermen. The proposal disregarded the contribution made by the fishing States to the satisfaction of the world's growing demand for food. For all those reasons, the French delegation would vote against the ten-Power draft resolution.

31. He had said before what immense sacrifices acceptance of the joint United States and Canadian proposal (A/CONF.19/L.11) would involve for France. Nevertheless, his delegation was prepared to vote for that proposal. He hoped that that example of sacrifice

would be understood and followed by other delegations. If the opposing positions remained rigid, a majority — even a two-thirds majority — would not, of course, put an end to the debate. However, sympathetic co-operation could yield excellent results, as was shown by the outcome of the negotiations between the Governments of Denmark and the United Kingdom in regard to fishing in the Faroe Islands area and by the offer of arbitration made by the United Kingdom to Iceland.

32. Referring to the amendments submitted jointly by Brazil, Cuba and Uruguay (A/CONF.19/L.12), which provided for fair and balanced rules in the case of special situations, he said the French delegation would vote in favour of that conciliatory text.

33. Lastly, he thanked the sponsors of the draft resolution contained in document A/CONF.19/L.8, a timely one at a juncture when technical assistance was about to be considered in May at the Summit Conference at Paris. In that connexion he recalled that, in the course of his recent visit to the United States, the President of the French Republic had stressed that real peace could not exist without economic development. All countries able to do so — and France was one of them — should agree at least to make a start on co-operation to promote economic development.

34. Mr. RADOUILSKY (Bulgaria) said that the task of the Conference was to create a rule of international law on the breadth of the territorial sea and fishery limits which must be universal in character. Accordingly, the test of the proposals that had emerged from the Committee of the Whole and the new proposals before the Conference was: to what extent were they universal? An analysis of the results of the voting in the Committee showed that the proposal adopted by a majority by no means satisfied that test. Thirty-six delegations had voted for a twelve-mile limit, while forty-three delegations, including two which had also voted for the twelve-mile limit, had voted in favour of the Canadian-United States proposal. The action of those two delegations should be construed as denoting their preference for a twelve-mile limit.

35. Furthermore, three States whose coastlines accounted for nearly the whole length of the Pacific shores of South America had voted against both the proposals, because they wanted to establish a breadth of territorial sea well in excess of twelve miles. It was also significant that many of the States which had voted for the twelve-mile limit and against the " six plus six " formula were newly independent countries, having no powerful warships, merchant navies or fishing fleets, some of them economically under-developed, and all of them concerned for their security and the protection of their economic interests. Those States belonged to all geographical regions and had widely differing economic structures and political systems; furthermore, their aggregate coastline was vast. Accordingly, not only had the " six plus six " proposal not gained anything approaching unanimity in Committee but, in addition, the proposal, adopted by a slender majority, was at variance with the view of nearly half of the countries of the world.

36. The positions and views expressed during the general debate in the Committee were the outcome of two years' reflection. Hence, it seemed unduly optimistic on the part of certain delegations to believe that there would be a substantial change of vote in the plenary Conference. In view of those considerations, it was doubtful whether the adoption of a rule approved by a small majority would serve any useful purpose. Even if the " six plus six " proposal obtained a two-thirds majority, the diplomatic act embodying such a decision would probably not be ratified by countries which had voted against it. It was also doubtful whether it would be ratified by States abstaining in the vote, or even by certain States voting for the proposal; and to those countries should be added the States which had been debarred from participation in the Conference. The " six plus six " formula could thus never become a universal rule of law and could have no practical significance. The Bulgarian delegation further believed that such a decision would harm the cause of co-operation among States and would increase the number of disputes on fisheries and other questions. Attempts to impose on States decisions with which they could not agree created grounds for the violation of international law; certain States would undoubtedly invoke a rule of law which did not in fact exist, and that would give rise to much controversy.

37. An argument in favour of the adoption of some kind of rule by the Conference was that the existing situation was chaotic. His delegation considered, however, that the description of the current situation was tendentious and exaggerated. Many delegations had argued that every State was entitled to establish the breadth of its territorial sea between three and twelve miles; if that rule were adopted, there could be no question of a " chaotic " situation. The variety of limits observed by different States in accordance with their own interests did not indicate chaos but, on the contrary, argued in favour of the flexible three-mile to twelve-mile limit. A final decision on the breadth of the territorial sea could wait, in view of the considerable differences of opinion on the subject that still prevailed. The Bulgarian delegation would therefore vote in favour of the ten-Power draft resolution (A/CONF.19/L.9), which provided for the postponement of such a decision and also offered a solution for the problem of fishery limits which took existing economic interests into account.

38. Mr. BOUZIRI (Tunisia) recalled that, since his delegation's statement at the 19th meeting of the Committee of the Whole, a number of new events had occurred; the proposals submitted by Canada (A/CONF. 19/C.1/L.4) and the United States (A/CONF.19/C.1/L.3) had been merged into a single proposal, as had also the Mexican proposal (A/CONF. 19/C.1/L.2) and that of the sixteen Powers (A/CONF.19/C.1/L.6). He regretted that the latter proposal, although moderate, had suffered defeat in Committee; it contained wise principles which would come to be accepted one day. It could not be denied, nevertheless, that it did not correspond to the wishes of the majority of the countries represented at the Conference, that its support of certain progressive principles was premature and that, finally, the text submitted jointly by Canada and the United States was the one which best reflected the position of the majority. Though his delegation had criticized that text, it was an undoubted advance over the original United States proposal. It remained open to criticism in many respects

and was far removed from the proposals which the Tunisian Government would have liked to see prevail. However, his delegation was acutely conscious of the disastrous consequences that would ensue from a failure of the Conference. The accomplishments of the 1958 Conference would become naught, and violence would spread throughout the seas to the detriment of weak and unarmed peoples. On the other hand, if the joint United States and Canadian proposal were adopted, a partial success would be achieved and the Conference would be saved.

39. The Tunisian Government believed that the most important thing was to find possibilities of agreement step by step. First, the countries whose territorial sea did not have a breadth greater than six miles would join in one agreement. For all those countries, there would be a uniform limit which would be exactly that of six sea miles. Next, a limit for the contiguous fishing zone would be fixed for all countries, whatever their position with regard to the breadth of the territorial sea; that limit would amount to twelve miles. If those partial results were achieved, a substantial stage would have been completed on the road towards a general agreement which would inevitably come about at a later time.

40. In that spirit, the Tunisian delegation would vote for the draft submitted jointly by the United States and Canada. The Tunisian delegation's support of that proposal did not, however, imply that its application should be absolute and universal or that the principles it contained should be rigidly applied to all countries that might accept the proposal. For its part, Tunisia — which at present applied the three-mile limit in respect of its territorial waters — would have progressed towards an ideal solution by adopting a breadth of six miles for the future. The recognition of its right to a fishing limit of twelve miles would constitute a satisfactory advance. He wished, however, to make reservations concerning the rights granted by the joint text to foreign fishermen. It would not be realistic to require countries which had fixed the breadth of their territorial sea at twelve miles to waive that limit immediately. Even if the joint proposal were adopted, the position of States having a territorial sea of twelve miles should be respected.

41. By and large, the Tunisian delegation believed that the adoption of the joint Canadian and United States proposal would put an end to the anarchy in the law of the sea, reduce the possibility of incidents and contribute to establishing a *modus vivendi* between the States which would accept the six-mile rule and those which would remain faithful to the twelve-mile rule. In practice, it would be necessary to appeal to everyone's spirit of understanding rather than to take advantage of a rule of law that might perhaps become established or of the opposition to that rule of law. He hoped that the adoption of the joint draft would ultimately produce truly universal agreement.

42. Mr. GUDMUNDUR I GUDMUNDSSON (Iceland), introducing his delegation's amendment (A/CONF. 19/L.13) to the second proposal adopted by the Committee of the Whole (A/CONF.19/L.4, annex), recalled that Iceland had whole-heartedly supported the original Canadian proposal (A/CONF.19/C.1/L.4) for a six-mile territorial sea plus a six-mile fishing zone, which had, in its opinion, represented a fair and honest compromise. Since that proposal had been modified by a clause allowing fishing by foreign nationals inside the twelve-mile limit for a period of ten years, however, his country could no longer support the joint Canadian and United States proposal as adopted by the Committee.

43. The underlying idea of that proposal was to provide a transition period in which the industries affected might adjust themselves to the new situation, and the countries which were prepared to support that principle were obviously taking that attitude in a spirit of compromise and helpfulness. He hoped, however, that those delegations would understand that such a principle could not reasonably be expected to apply to the special position of Iceland, whose people were so greatly dependent on fisheries for their livelihood and economic development. Iceland had adopted a twelve-mile fishing limit in 1958 because experience had shown that without such measures the stocks of fish in Icelandic waters would risk depletion. In fact, the measures that had been adopted would benefit not only Iceland, but all those fishing off its shores. His delegation had had no choice but to submit its amendment which, if adopted, would exempt Iceland from the application of the general principle of a ten-year limitation. The vote on the Icelandic proposal (A/CONF.19/C.1/L.7/Rev.1) in the Committee of the Whole had amply shown full realization throughout the world of the special situation of his country. The facts spoke for themselves, and it was a matter of plain commonsense that Iceland's situation was one of hardship.

44. The question of special situations was referred to in paragraph 5 of the new Canadian and United States proposal (A/CONF.19/L.11), which was a saving clause concerning bilateral or multilateral fisheries agreements. But the Conference was not in a position to decide whether or not such agreements would be concluded, and pious hopes could not solve an urgent and immediate problem. The Conference had the heavy responsibility of settling the problems submitted to it: it could not pass them on to anyone else. His delegation therefore believed that the paragraph in question not only failed to provide a solution, but carried the danger of mistakenly implying that the problem had already been solved. A similar attempt to persuade the Conference to evade its responsibilities in the matter had been implied in the United Kingdom representative's suggestion that the question of the applicability of the ten-year period to the Icelandic situation should be submitted to arbitration. However, to be impartial, a decision of that kind had to be based on established criteria. It was the function of the Conference to establish such criteria and to solve the problem outright. The United Kingdom representative seemed reluctant to allow the Conference to settle the matter by a free and frank vote, for fear lest the decision would again be in favour of Iceland, as it had been in the Committee of the Whole.

45. The United States representative was labouring under a misconception in thinking that progress was being made in negotiations between Iceland and the United Kingdom. No such negotiations were in fact taking place.

46. In conclusion, he stressed that the adoption of his delegation's amendment was a matter of the utmost

importance to his country. His delegation's votes on all the proposals and amendments that had been submitted would be guided by that fundamental fact.

47. Mr. BARNES (Liberia), introducing the draft resolution by Ethiopia, Ghana and Liberia (A/CONF. 19/L.8), thanked the United Kingdom and the United States delegations for their support. The proposal was self-explanatory. With the development of the international law concerning fisheries and the stress now laid on fishing, as demonstrated by the efforts to conserve fishing rights, the coastal States had shown a concomitant desire to improve fishing techniques. Technical assistance would be required to adjust their techniques to the expected change in international law. That would be particularly important for countries whose economies were largely dependent on fishing, a fact on which emphasis had been laid throughout the Conference. If the request in the draft resolution came to fruition, the coastal States engaged in fishing, or likely to engage in it in future, would derive great economic advantages. Furthermore, when the States now fishing the waters of other States eventually withdraw, the latter would be able to continue to exploit the living resources of the sea and to maintain the equilibrium. The economic technical assistance referred to was intended to cover technical assistance in the broadest sense, especially the development of fishing and the fishing industries and such subsidiary activities as canning and processing. If the draft resolution were adopted, it was to be hoped that it would not remain a dead letter, but that it would be put into effect with all the resources at the command of the United Nations.

48. Mr. GLASER (Romania) wished to reply to certain arguments which had been advanced in the Conference. It had been said that some sort of solution should be reached. For his own part, he did not agree that a bad solution was preferable to no solution at all. The answer to the delegations which opposed the general recognition of the twelve-mile rule was that countries which now applied the three-mile limit would lose nothing by extending the breadth of their territorial sea to twelve miles. By contrast, the general application of a six-mile limit would amputate the territorial sea of all those countries which had already adopted a twelve-mile limit. Secondly, it had been argued that the newly independent States would one day possess their own fleet and that it would be in their interest to be able to employ that fleet in as broad an area of the high seas as possible. That argument was false. In order to develop, those young States must enjoy a juridically favourable situation. Without such a situation, in other words without a sufficiently broad territorial sea, they would hardly ever come to have a sufficiently large fleet.

49. Thirdly, it had been said that the ten-Power draft resolution (A/CONF.19/L.9) was not realistic. In fact, that draft resolution took note, in an entirely realistic manner, of the existence of a disagreement. Likewise, it recognized the right of the coastal State to practice fishing up to a distance of twelve miles from the coast; that was a realistic solution and for that reason the Romanian delegation would vote in favour of the draft resolution.

50. The true reason why a general agreement concerning the breadth of the territorial sea appeared to be impossible was that opinion was sharply divided over the question of the access of warships to the area lying inside the twelve-mile line. So far as the limit of fishing zones was concerned, agreement could not be reached because the States which traditionally fished in the waters of other States did not wish to surrender their so-called acquired rights. It had been stated that it would be unjust and brutal to deprive certain States of the exercise of an ancient right; but to argue thus was to forget the injustice done to millions of persons who, by reason of those abusive practices, had for centuries been deprived of the resources of the sea near their coasts.

51. Replying to those delegations which claimed that the failure of the Conference would cause anarchy and chaos, he said that there had never yet been any unanimously recognized rules on the breadth of the territorial sea; yet maritime traffic had not been impeded. After all, the outer limit of the territorial sea was the maritime frontier of a State. It was inconceivable that the frontier could be altered without the consent of the State concerned.

52. Mr. AMONOO (Ghana) recalled his delegation's reference at the 13th meeting of the Committee of the Whole, during the general debate, to the neeed for technical assistance for coastal States in developing their fishing resources. Since then, that suggestion had received almost universal support and the draft resolution co-sponsored by Ghana (A/CONF.19/L.8) had been prepared in co-operation with many other delegations. The draft resolution raised no controversial issues and was in no way prejudicial either to the proposals adopted at the 1958 Conference or to the proposals now under consideration. On the contrary, its adoption should have far-reaching and beneficial results. The draft resolution was self-explanatory, and he regarded it as a potent means of determining the goodwill of all delegations to the Conference. He hoped that the great and small Powers which had pledged their support would confirm it by voting in favour of the draft resolution and that technical assistance to coastal States in improving and expanding their fishery and fishing industries would soon become reality, through general co-operation.

The meeting rose at 12.30 a.m.

THIRTEENTH PLENARY MEETING

Tuesday, 26 April 1960, at 10.10 a.m.

President: Prince WAN WAITHAYAKON (Thailand)

Consideration of the questions of the breadth of the territorial sea and fishery limits in accordance with resolution 1307 (XIII) adopted by the General Assembly on 10 December 1958 (A/CONF.19/L.4, L.5/Rev.1, L.6, L.8, L.9, L.11 to L.13) ***(continued)***

[Agenda item 9]

1. Mr. GARCIA HERRERA (Colombia) said that his delegation had stated at the close of the general debate

at the 27th meeting of the Committee of the Whole that it was in favour of conciliation in all circumstances of international life, and considered compromise as the most effective method of reaching equitable and satisfactory solutions. It had stated that for that reason it would vote for the proposal submitted jointly by the Canadian and United States delegations (A/CONF.19/C.1/L.10). Since then amendments had been submitted jointly by Brazil, Cuba and Uruguay (A/CONF.19/L.12) to the second proposal adopted by the Committee of the Whole (A/CONF.19/L.4, annex) dealing with the treatment of special situations. As the Colombian delegation had explained, all the earlier proposals relating to special situations and preferential rights had had features which, if combined, might have provided an appropriate formula — though none of them had in itself entirely fulfilled the required conditions — and his delegation had accordingly suggested that efforts be made to that end. The new amendments represented a satisfactory fusion, and had the additional merit of providing that the exercise of preferential rights should not be effected by a unilateral and final decision by a coastal State, but should be subject to scientific arbitration. The Colombian delegation would therefore support that proposal, not only for its intrinsic merits, but also because it had been submitted by the delegations of three sister Latin-American republics.

2. The Colombian delegation had every sympathy with such special situations as that of Iceland, although Colombia did not enjoy diplomatic or other relations with that country. The Latin-American amendments, together with the offer made at the 11th plenary meeting by the United Kingdom representative, furnished Iceland with safeguards even more far-reaching than those embodied in the Icelandic amendment (A/CONF.19/L.13) to the second proposal in the report of the Committee of the Whole, for which his delegation would be unable to vote, because it was incompatible with the Latin-American amendments. For the same reason, it would be unable to vote for the Peruvian draft resolution (A/CONF.19/L.5/Rev.1) or any other which covered the same ground as the Latin-American amendments.

3. He would vote for the draft resolution relating to technical assistance submitted by Ethiopia, Ghana and Liberia (A/CONF.19/L.8), which was useful and constructive.

4. He would vote against the ten-Power draft resolution (A/CONF.19/L.9), and could only regret that two Latin-American countries should have seen fit to associate themselves with it. It was unacceptable because it prejudged the issue of the Conference's success; because it suggested that the Conference should recognize the right of all States to extend the breadth of their territorial sea to a limit of twelve miles, although most of the participants in the Conference had rejected that idea; and because it made an untenable distinction between countries which had declared their independence prior to 24 October 1945 and those which had done so subsequently. He could see no justification for such discrimination, which ran counter to the principle, well grounded in international law, of the sovereign equality of States.

5. Mr. RAFAEL (Israel) observed that since the voting in the Committee of the Whole the situation had shown three main features. In the first place, there was no longer a proposal for a twelve-mile breadth of the territorial sea before the Conference. Secondly, the proponents of the six-mile limit had made further compromises to accommodate divergent interests, particularly with reference to special situations. Thirdly, a draft resolution for technical assistance to coastal States wishing to expand their fisheries and fishing industries (A/CONF.19/L.8) had been introduced. Israel particularly welcomed that last proposal, having advocated such action at the 16th meeting during the general debate in the Committee of the Whole, and was very gratified to note that three African States had taken the initiative, which would undoubtedly draw greater attention to the needs of economically under-developed coastal States. It was to be hoped that the appropriate organs of the United Nations and the specialized agencies concerned would make every effort to implement the proposal. Technical and material aid would be needed in adjusting current practices to a possible extended fishing zone, would facilitate mutual accommodation during the proposed transition period, and would lead to bilateral and multilateral agreements such as those now specifically mentioned in the joint Canadian and United States proposal (A/CONF.19/L.11).

6. The great shortcoming of the original Canadian and United States proposal (A/CONF.19/C.1/L.10) had been its failure to provide for special situations. If the amendments submitted by Brazil, Cuba and Uruguay (A/CONF.19/L.12) to the second proposal adopted by the Committee of the Whole were incorporated in it, and if the new clause relating to bilateral and multilateral agreements were also embodied in it, the needs and interests of countries with special situations could undoubtedly be met. It should be borne in mind, however, that the letter of the law was not enough; it was the spirit in which the proposal would be implemented that would really count.

7. Great efforts had been made since 1958 to reach agreement, and many delegations had worked unremittingly to accommodate one another's views. In his delegation's opinion, the second proposal adopted by the Committee of the Whole, as amended by Brazil, Cuba and Uruguay, together with the draft resolution submitted by Ethiopia, Ghana and Liberia, represented the greatest extent of such accommodation, recognizing as those proposals did both national requirements and the interests of the international community. The Israeli delegation would therefore vote for those three texts.

8. Mr. FATTAL (Lebanon) wished, before the vote was taken, to explain the reasons why his country had put its name to the ten-Power draft resolution (A/CONF.19/L.9). His Government was concerned not so much about the width of its country's territorial sea as about the problem of the Gulf of Aqaba. Lebanon, whose liberalism and traditional reasonableness were well known, wished to stress that, although the Conference had feigned to ignore it and had subjected it to a conspiracy of silence, that problem, together with the tragedy of Palestine, had never ceased to influence decisions one way or another. It was because Lebanon was legitimately anxious to preserve the Arabian nature of the waters of Aqaba that it had agreed to act as a sponsor of the ten-Power draft resolution. For the same

reason, his delegation had been instructed by the Lebanese Government to vote for the joint Canadian and United States proposal (A/CONF.19/L.11), provided it were found possible to include in the proposed protocol a saving clause to the effect that it would not apply to the waters of the Gulf of Aqaba. On that condition alone could the Lebanese delegation abandon the ten-Power draft resolution.

9. The PRESIDENT announced that the discussion had been concluded.

VOTING ON PROPOSALS AND AMENDMENTS (A/CONF.19/L.4, L.5/Rev.1, L.6, L.8, L.9, L.11 TO L.13)

10. The PRESIDENT invited the Conference to vote on the proposals and amendments before it. It should be observed that the new joint proposal by Canada and the United States of America (A/CONF.19/L.11) might be taken as a series of amendments to the second proposal in the report of the Committee of the Whole (A/CONF.19/L.14, annex); the sponsors had agreed to that course.

11. The PRESIDENT put to the vote the first proposal in the report of the Committee of the Whole (A/CONF.19/L.4, annex).

The vote was taken by roll-call.

Iraq, having been drawn by lot by the President, was called upon to vote first.

In favour: Iraq, Jordan, Lebanon, Liberia, Libya, Mexico, Morocco, Paraguay, Peru, Saudi Arabia, Sudan, Tunisia, United Arab Republic, Venezuela, Yemen, Yugoslavia, Argentina, Burma, Cambodia, Cuba, Ecuador, Ethiopia, Guinea, Iceland, Indonesia.

Against: Ireland, Italy, Japan, Luxembourg, Monaco, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Philippines, Portugal, San Marino, Spain, Sweden, Switzerland, Thailand, Turkey, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Republic of Viet-Nam, Australia, Belgium, Bolivia, Cameroons, Canada, Ceylon, China, Colombia, Costa Rica, Dominican Republic, France, Federal Republic of Germany, Greece, Honduras.

Abstentions: Israel, Republic of Korea, Laos, Federation of Malaya, Poland, Romania, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Uruguay, Albania, Austria, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Chile, Czechoslovakia, Denmark, El Salvador, Finland, Ghana, Guatemala, Haiti, Holy See, Hungary, India, Iran.

The result of the vote was 25 in favour and 37 against, with 26 abstentions.

The first proposal in the report of the Committee of the Whole was rejected.

12. The PRESIDENT put to the vote the Icelandic amendment (A/CONF.19/L.13) to the second proposal in the report of the Committee of the Whole (A/CONF.19/L.4, annex).

The vote was taken by roll-call.

India, having been drawn by lot by the President, was called upon to vote first.

In favour: Indonesia, Iraq, Jordan, Libya, Mexico, Morocco, Panama, Peru, Saudi Arabia, Sudan, Tunisia, United Arab Republic, Venezuela, Yemen, Yugoslavia, Argentina, Burma, Cambodia, Chile, Ecuador, El Salvador, Ethiopia, Guinea, Iceland.

Against: Ireland, Italy, Japan, Luxembourg, Federation of Malaya, Monaco, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Philippines, Poland, Portugal, Romania, San Marino, Spain, Sweden, Switzerland, Thailand, Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Republic of Viet Nam, Albania, Australia, Belgium, Bolivia, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Cameroons, Canada, Ceylon, China, Colombia, Costa Rica, Czechoslovakia, Denmark, Dominican Republic, France, Federal Republic of Germany, Greece, Haiti, Honduras, Hungary.

Abstentions: India, Iran, Israel, Republic of Korea, Laos, Liberia, Paraguay, Turkey, Uruguay, Austria, Cuba, Finland, Ghana, Guatemala, Holy See.

The result of the vote was 24 in favour and 48 against, with 15 abstentions.

The Icelandic amendment was rejected.

13. Mr. GROS (France), speaking to a point of order, observed, first, that the French text of paragraphs 6 and 7 of the three-Power amendments (A/CONF.19/L.12) to the second proposal adopted by the Committee of the Whole did not absolutely agree with the English and Spanish texts, and that it failed to stipulate sufficiently precisely that, in the event of dispute about a claim to preferential rights, it was the decision of the special commission that prevailed, and that the State claiming such rights could take no measures before such decision was taken. The French text of the proposed paragraph 10 was equally at variance with the English and Spanish texts. He trusted that the Drafting Committee would put matters right.

14. Secondly, he proposed that the new paragraph 4 of the three-Power amendments be replaced by paragraph 5 of the revised joint proposal (A/CONF.19/L.11). The two paragraphs were substantially the same, and it would be logical to make the replacement he proposed because the two amendments tended to run together so far as modification of the second proposal adopted by the Committee of the Whole was concerned.

15. Mr. AMADO (Brazil), speaking on behalf of the sponsors of the three-Power amendments, agreed to make the change proposed by the French representative.

16. The PRESIDENT put to the vote the amendments submitted by Brazil, Cuba and Uruguay (A/CONF.19/L.12) to the second proposal in the report of the Committee of the Whole (A/CONF.19/L.4, annex), as just modified by agreement between the sponsors and the French delegation.

The vote was taken by roll-call.

Yemen, having been drawn by lot by the President, was called upon to vote first.

In favour: Yugoslavia, Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Cameroons, Canada, Ceylon,

Chile, China, Colombia, Costa Rica, Cuba, Denmark, Dominican Republic, Ecuador, El Salvador, Ethiopia, Finland, France, Federal Republic of Germany, Ghana, Greece, Holy See, Honduras, Iceland, Ireland, Israel, Italy, Republic of Korea, Laos, Liberia, Luxembourg, Mexico, Monaco, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Portugal, San Marino, Spain, Sweden, Switzerland, Thailand, Turkey, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Republic of Viet-Nam.

Against: Yemen, Albania, Bulgaria, Byelorussian Soviet Socialist Republic, Czechoslovakia, Hungary, Indonesia, Iraq, Japan, Jordan, Libya, Morocco, Poland, Romania, Saudi Arabia, Sudan, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic.

Abstaining: Burma, Cambodia, Guatemala, Guinea, Haiti, India, Iran, Federation of Malaya, Tunisia, Venezuela.

The result of the vote was 58 in favour and 19 against, with 10 abstentions.

The three-Power amendments were adopted, having obtained the required two-thirds majority.

17. The PRESIDENT said that, if there were no objections, the amendments contained in the joint Canadian and United States proposal (A/CONF.19/L.11) would be incorporated in the second proposal in the report of the Committee of the Whole (A/CONF.19/L.4, annex).

It was so decided.

18. The PRESIDENT put the second proposal in the report of the Committee of the Whole (A/CONF.19/L.4, annex), as thus amended, to the vote.

The vote was taken by roll-call.

Turkey, having been drawn by the lot by the President, was called upon to vote first.

In favour: Turkey, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Republic of Viet-Nam, Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Cameroons, Canada, Ceylon, China, Colombia, Costa Rica, Cuba, Denmark, Dominican Republic, Ethiopia, Finland, France, Federal Republic of Germany, Ghana, Greece, Guatemala, Haiti, Holy See, Honduras, Ireland, Israel, Italy, Jordan, Republic of Korea, Laos, Liberia, Luxembourg, Federation of Malaya, Monaco, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Paraguay, Portugal, San Marino, Spain, Sweden, Switzerland, Thailand, Tunisia.

Against: Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Venezuela, Yemen, Yugoslavia, Albania, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Chile, Czechoslovakia, Ecuador, Guinea, Hungary, Iceland, India, Indonesia, Iraq, Libya, Mexico, Morocco, Panama, Peru, Poland, Romania, Saudi Arabia, Sudan.

Abstaining: Cambodia, El Salvador, Iran, Japan, Philippines.

The result of the vote was 54 in favour and 28 against, with 5 abstentions.

The second proposal in the report of the Committee of the Whole, as amended, was not adopted, having failed to obtain the required two-thirds majority.

19. Mr. GARCIA AMADOR (Cuba) requested that the meeting be suspended for a short time, as the result of the previous votes made it necessary for his delegation to hold informal consultations with a view to revising the Cuban draft resolution (A/CONF.19/L.6).

20. Mr. GARCIA ROBLES (Mexico) suggested that, since the Cuban draft resolution was completely independent of the other proposals and amendments still before the Conference, the vote on the latter might, in order to speed up business, be taken before the recess, in which case the only business remaining to the Conference at the close of the meeting would be to dispose of the Cuban draft resoltuion.

21. Mr. GARCIA AMADOR (Cuba) agreed to that suggestion.

22. Mr. ULLOA SOTOMAYOR (Peru) observed that the Peruvian draft resolution (A/CONF.19/L.5/Rev.1) had posited an exception to a rule which had not been adopted by the Conference. It had therefore become irrelevant, and he would withdraw it.

23. The PRESIDENT invited the Conference to take action on the draft resolution relating to technical assistance, submitted by Ethiopia, Ghana and Liberia (A/CONF.19/L.8).

24. Mr. GARCIA ROBLES (Mexico) said that the ideas embodied in the three-Power draft resolution were highly commendable, but certain phrases might be liable to misinterpretation in the light of subsequent circumstances, and he would be obliged to abstain from voting unless they were changed. The objectionable phrases were: " in the light of new developments in international law and practices " in operative paragraph 1; and " based on the new developments " in operative paragraph 3.

25. Ato GOYTOM PETROS (Ethiopia), speaking on behalf of the three sponsors, explained that the proposal had been prepared on the assumption that the joint Canadian and United States proposal would be adopted.

25. The PRESIDENT put to the vote the draft resolution relating to technical assistance submitted by Ethiopia, Ghana and Liberia (A/CONF.19/L.8).

The vote was taken by roll-call.

The Federal Republic of Germany, having been drawn by lot by the President, was called upon to vote first.

In favour: Federal Republic of Germany, Ghana, Greece, Guinea, Haiti, Holy See, Honduras, Iceland, India, Ireland, Israel, Italy, Japan, Jordan, Republic of Korea, Laos, Lebanon, Liberia, Luxembourg, Federation of Malaya, Monaco, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Portugal, San Marino, Spain, Sudan, Sweden, Switzerland, Thailand, Tunisia, Turkey, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, Republic of Viet-Nam, Yugoslavia, Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Cam-

bodia, Cameroons, Canada, Ceylon, Chile, China, Colombia, Costa Rica, Cuba, Denmark, Dominican Republic, Ecuador, El Salvador, Ethiopia, Finland, France.

Against: None.

Abstaining: Guatemala, Hungary, Indonesia, Iran, Iraq, Libya, Mexico, Morocco, Poland, Romania, Saudi Arabia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Yemen, Albania, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Czechoslovakia.

The result of the vote was 68 in favour and none against, with 20 abstentions.

The draft resolution was adopted, having obtained the required two-thirds majority.

27. The PRESIDENT put to the vote the draft resolution submitted by Indonesia, Iraq, Lebanon, Mexico, Morocco, Saudi Arabia, Sudan, the United Arab Republic, Venezuela and Yemen (A/CONF.19/L.9).

The vote was taken by roll-call.

Morocco, having been drawn by lot by the President, was called upon to vote first.

In favour: Morocco, Panama, Peru, Romania, Saudi Arabia, Sudan, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Venezuela, Yemen, Albania, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Czechoslovakia, Ecuador, Ethiopia, Ghana, Guinea, Hungary, Iceland, India, Indonesia, Iran, Iraq, Jordan, Lebanon, Libya, Mexico.

Against: Netherlands, New Zealand, Nicaragua, Norway, Paraguay, Portugal, San Marino, Spain, Sweden, Switzerland, Thailand, Turkey, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Australia, Belgium, Bolivia, Brazil, Cameroons, Canada, Chile, China, Costa Rica, Denmark, Dominican Republic, France, Federal Republic of Germany, Greece, Haiti, Honduras, Israel, Italy, Japan, Republic of Korea, Laos, Luxembourg, Monaco.

Abstaining: Pakistan, Philippines, Poland, Uruguay, Republic of Viet-Nam, Yugoslavia, Argentina, Austria, Ceylon, Colombia, Cuba, El Salvador, Finland, Guatemala, Holy See, Ireland, Liberia, Federation of Malaya.

The result of the vote was 32 in favour and 38 against, with 18 abstentions.

The ten-Power draft resolution was rejected.

28. Mr. GARCIA HERRERA (Colombia) said that his delegation's vote should be recorded as negative, not as an abstention.

29. The PRESIDENT said that that change would be noted in the summary record of the meeting, but that the result of the vote, having already been announced, could not be changed.

30. Mr. DEAN (United States of America) pointed out that a great deal of work had been done in the past two years on the problems before the Conference. Any agreement that could be reached would be welcomed throughout the world, and would prove the soundness of United Nations procedures, which was doubted in some quarters. He therefore moved that the second proposal in the report of the Committee of the Whole (A/CONF.19/L.4, annex) be reconsidered.

31. Mr. SHUKAIRY (Saudi Arabia) said that it was too late to entertain the United States motion. The advocates of the twelve-mile limit had been appealing to the United States delegation for a compromise for the past six weeks, but the only compromise that had emerged had been that between the Canadian and United States positions. The interests and needs of the advocates of the twelve-mile limit had been flatly rejected by the United States delegation as recently as at the previous meeting. Even if a two-thirds majority could be conjured up, adoption of the joint proposal could not create a valid rule of international law. The methods used to secure votes for the Canadian-United States proposal had been unorthodox, to say the least; the pressure exercised represented no sincere effort to reach agreement, for the interests of others had been despised and rejected. In his view, it was contrary to United Nations practice to reconsider a vote without submitting a new proposal. The United States motion was merely part of a campaign to exercise pressure unprecedented at a United Nations conference. For the sake of the dignity of the United Nations, the motion should be rejected outright and the door left open to a genuine agreement, which patently did not exist at that time.

32. Mr. TUNKIN (Union of Soviet Socialist Republics) thought the results of the voting pointed to one sole conclusion—namely, that the questions before the Conference were not yet ripe for codification. All delegations had come to the Conference with a desire to solve the problems left in abeyance in 1958; nevertheless, certain countries, including his own, had pointed out in the General Assembly that it would be premature to convene a second conference as early as 1960. In his opinion, the results of the voting were salutary, for a bad decision was worse than none at all. The door was now left open for further efforts to create a real rule of international law. He had been surprised to hear the United States representative move the reconsideration of the joint proposal: the use of pressure to obtain a mechanical majority could do no good. The motion was yet a further example of " diplomacy by force ", which was doomed to failure and would be censured by history. The United States delegation had made a similar attempt in 1958, thereby causing a great deterioration in the atmosphere prevailing at that Conference. It was to be hoped that the United States representative would not press his motion, to avoid impairing the spirit of co-operation that was so much required and sought after. But if the motion were not withdrawn many delegations, surely, would vigorously resist such a last-minute attempt to impose a decision on the Conference.

33. The PRESIDENT, applying rule 32 of the rules of procedure, put to the Conference the United States motion that the second proposal in the report of the Committee of the Whole, as amended by the joint Canadian and United States proposal, be reconsidered.

The vote was taken by roll-call.

Costa Rica, having been drawn by lot by the President, was called upon to vote first.

In favour: Costa Rica. Denmark, Dominican Republic, France, Federal Republic of Germany, Greece, Guatemala, Haiti, Holy See, Honduras, Ireland, Israel, Italy, Japan, Jordan, Republic of Korea, Laos, Liberia, Luxembourg, Federation of Malaya, Monaco, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Portugal, San Marino, Spain, Sweden, Switzerland, Thailand, Turkey, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Republic of Viet-Nam, Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Cameroons, Canada, Ceylon, Chile, China, Colombia.

Against: Czechoslovakia, Ecuador, Ethiopia, Ghana, Guinea, Hungary, Iceland, India, Indonesia, Iraq, Libya, Mexico, Morocco, Panama, Peru, Poland, Romania, Saudi Arabia, Sudan, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Venezuela, Yemen, Yugoslavia, Albania, Bulgaria, Burma, Byelorussian Soviet Socialist Republic.

Abstaining: Cuba, El Salvador, Finland, Iran, Paraguay, Philippines, Tunisia, Cambodia.

The result of the vote was 50 in favour and 29 against, with 8 abstentions.

The United States motion was not carried, having failed to obtain the required two-thirds majority.

The meeting rose at 12.25 p.m.

FOURTEENTH PLENARY MEETING

Tuesday, 26 April 1960, at 3.20 p.m.

President: Prince WAN WAITHAYAKON (Thailand)

Consideration of the questions of the breadth of the territorial sea and fishery limits in accordance with resolution 1307 (XIII) adopted by the General Assembly on 10 December 1958 (A/CONF.19/L.6) *(concluded)*

[Agenda item 9]

VOTING ON PROPOSALS AND AMENDMENTS (A/CONF.19/L.6) *(concluded)*

1. The PRESIDENT invited the representative of Cuba to introduce the Cuban draft resolution (A/CONF.19/L.6).

2. Mr. GARCIA AMADOR (Cuba) wished only to point out that the Cuban draft resolution sought to establish a régime whereby preferential consideration would be given to the special requirements and interests of the coastal State in certain cases. He hoped that delegations would adopt the same approach as they had earlier to similar proposals and vote accordingly.

3. The PRESIDENT put the Cuban draft resolution (A/CONF.19/L.6) to the vote.

The vote was taken by roll-call.

Greece, having been drawn by lot by the President, was called upon to vote first.

In favour: Iceland, Indonesia, Iraq, Republic of Korea, Libya, Mexico, Morocco, Panama, Peru, Philippines, Saudi Arabia, Sudan, United Arab Republic, Uruguay, Yemen, Yugoslavia, Argentina, Chile, Cuba, Ecuador, El Salvador, Ethiopia.

Against: Greece, Hungary, Ireland, Italy, Japan, Laos, Luxembourg, Monaco, Netherlands, New Zealand, Nicaragua, Norway, Poland, Portugal, Romania, Spain, Sweden, Switzerland, Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Albania, Australia, Belgium, Bulgaria, Byelorussian Soviet Socialist Republic, Cameroons, Czechoslovakia, Finland, France, Federal Republic of Germany.

Abstaining: Guatemala, Haiti, Honduras, India, Iran, Israel, Liberia, Federation of Malaya, Pakistan, Thailand, Tunisia, Turkey, Republic of Viet-Nam, Bolivia, Brazil, Burma, Cambodia, Canada, Ceylon, China, Colombia, Costa Rica, Dominican Republic, Ghana.

The result of the voting was 22 votes in favour and 33 against, with 24 abstentions.

The Cuban draft resolution was rejected.

EXPLANATIONS OF VOTE

4. Mr. VAN DER ESSEN (Belgium) said that, after having abstained from voting in the Committee of the Whole, the Belgian delegation had decided to vote at the plenary meeting for the joint proposal by Canada and the United States of America (A/CONF.19/L.11) and for the amendments thereto submitted jointly by Brazil, Cuba and Uruguay (A/CONF.19/L.12). It had done so because it believed that that proposal, which had obtained a simple majority in Committee, would be capable of securing the required two-thirds majority in plenary. That expectation had been almost fulfilled. Belgium had only a very short coast bordering on a narrow sea, and its inhabitants did much fishing; it had therefore a very great deal to lose by supporting the proposal in question, but had not wished to be the cause of wrecking what had seemed to be the last chance of reaching agreement. His country had been prepared to accept very heavy sacrifices for the sake of establishing a rule of international law, but as the compromise put forward had not obtained the required majority the Belgian Government did not consider itself bound by the vote which its delegation had cast.

5. Mr. MUHTADI (Jordan) said that his delegation was in favour of a maximum breadth of twelve miles for the territorial sea; but it had voted for the joint proposal because it had seemed the only alternative to failure of the Conference. Such failure would in his view work against the interests of Jordan and other small States. Hence, the joint proposal having failed to secure the required two-thirds majority, his delegation had voted also for the United States motion that it be reconsidered.

6. Mr. CHACON PAZOS (Guatemala) said his delegation had voted for the joint proposal on the clear under-

standing that Guatemala did not recognize any historic or other fishing rights of foreign States in its territorial waters or contiguous zone.

7. Mr. VLACHOS (Greece) said that, the votes cast at the previous meeting having made it impossible for the Conference to adopt a rule of international law on the breadth of the territorial sea or to establish an outer zone of exclusive fishing rights for the coastal State, the Greek delegation wished to make it clear that it had voted for the establishment of such a zone only with great reluctance and in the hope that that concession would enable the Conference to conclude its work by adopting new rules of international law on the matter. That having proved impossible, he declared in the name of the Greek Government that Greece would continue to recognize as valid only the relevant principles of international law as they at present obtained, and that it declined to recognize the existence of any exclusive fishing zone.

8. Mr. DIAZ GONZALEZ (Venezuela) recalled that the purpose of the ten-Power draft resolution (A/CONF. 19/L.9), of which his delegation had been one of the sponsors, had been to safeguard the legitimate interests of an appreciable minority of sovereign coastal States in an equitable and realistic manner, with due regard for the economic, political and biological factors involved. He regretted that he had been unable to support the joint proposal (A/CONF.19/L.11), which, although reasonable and based on negotiation, was not entirely just or equitable and ran counter to the interests of a substantial number of States, among them Venezuela. His delegation believed that further consideration of the two questions should await a more favourable atmosphere and be preceded by fuller diplomatic preparation.

9. Mr. TUNKIN (Union of Soviet Socialist Republics) explained that, although his Government viewed Iceland's needs with sympathy and had upheld that country's right to establish a twelve-mile fishing zone, he had been unable to support the Icelandic proposal because it sought to establish, on the basis of one specific case, a general rule which might give rise to difficulties and disputes.

10. He had voted against the amendment of Iceland (A/CONF.19/L.13), and those of Brazil, Cuba and Uruguay (A/CONF.19/L.12), to the joint proposal because the latter was unacceptable to his delegation. The Government of the Soviet Union was a firm advocate of technical assistance to under-developed countries and had granted it on very favourable terms to promote their economic independence. But he had none the less been obliged to abstain from voting on the draft resolution submitted by Ethiopia, Ghana and Liberia (A/CONF.19/L.8) because he believed that the questions it raised lay outside the Conference's terms of reference and could best be dealt with by the appropriate United Nations agency.

11. Mr. GLASER (Romania) considered that it would be superfluous to explain the very obvious reasons for which the Romanian delegation had voted against the United States motion for reconsideration of the Conference's decision on the joint proposal.

12. The Romanian delegation had been unable to support either the Icelandic proposal as adopted by the Committee of the Whole or the Icelandic amendment to the joint proposal. Despite the sympathy which the people and Government of Romania felt for the brave Icelanders, his delegation had come to the conclusion that the proposal was designed to transform a special case into a general rule, a process which could create a dangerous precedent. As to the Icelandic amendment (A/CONF.19/L.13), his delegation had had an additional reason for voting against it—namely, that it related to a proposal which his delegation considered inadmissible.

13. Ato GOYTOM PETROS (Ethiopia) said that the Ethiopian delegation had realized that the success of the Conference depended on a spirit of compromise and understanding prevailing, and had been prepared to make sacrifices to contribute to that success. Although his delegation favoured a twelve-mile territorial sea, it had supported the joint proposal as the only one likely to succeed and so put an end to the present anarchical situation. The Conference having failed to devise a generally acceptable solution, Ethiopia would continue to maintain a twelve-mile territorial sea both in principle and in practice.

14. Mr. ROSENNE (Israel) said that the votes cast by his delegation represented its contribution to the establishment of an agreed rule of international law on the breadth of the territorial sea and fishery limits. As the compromise proposal had failed to obtain the required two-thirds majority, his Government's position on the substance of those questions remained unchanged. The Israeli Government would recognize only those changes in existing international law which were embodied in an international instrument duly entered into and accepted by it.

15. Mr. MAMELI (Italy) said that his delegation had voted for both the joint proposals and for the three-Power amendments thereto in the hope of reaching a compromise solution and thereby ensuring the success of the Conference. As the proposals had failed to obtain the required majority, Italy would not consider itself bound by any decisions taken by the Conference, but only by the existing rules of international law on the matters concerned.

16. Mr. DEAN (United States of America) said that the joint proposal had been put forward at considerable sacrifice for United States interests in a sincere effort to meet other points of view, and with the sole purpose of achieving international agreement. It tried to reconcile the diverse and often conflicting interests of coastal States seeking a larger share of the resources of the sea off their coasts with the interests of those States which wanted the greatest possible freedom of the seas.

17. He recalled that, at the first United Nations Conference on the Law of the Sea, the United States proposal,[1] which corresponded closely to the present joint proposal, had received 45 votes in favour, 33 being cast against it with 7 abstentions; whereas the joint proposal

[1] *Official Records of the United Nations Conference on the Law of the Sea*, vol. II, annexes, document A/CONF.13/L.29.

had received 54 votes in favour, 28 being cast against it with 5 abstentions. Several countries which had promised their support had, however, voted against it or abstained. The eight-Power proposal [2] at the first Conference — the counter-part of the ten-Power draft resolution submitted to the present Conference — had received 39 votes in favour, 38 being cast against it with 8 abstentions; whereas the ten-Power draft resolution (A/CONF. 19/L.9) had received only 32 votes in favour, 39 being cast against it with 17 abstentions, counting the Colombian vote. Although the joint proposal had failed to obtain the required two-thirds majority by a single vote, it had received considerably greater support than any other proposal before either of the two Conferences, and he thanked those delegations which had supported it. He was pleased that the three-Power amendments (A/CONF.19/L.12) and the draft resolution of Ethiopia, Ghana and Liberia (A/CONF.19/L.8) had been carried.

18. He pointed out that his delegation's offer to agree on a six-mile breadth of territorial sea, provided that agreement could be reached on such a breadth on certain conditions, had been no more than an offer; its non-acceptance therefore left the pre-existing situation unchanged. His country was satisfied with the three-mile rule and would continue to regard it as established international law. Three miles was the sole breadth of territorial sea on which there had ever been anything like common agreement, and was a time-tested principle which offered the greatest opportunity to all nations without exception. Unilateral acts by States claiming a greater breadth of territorial sea were not sanctioned by international law, and conflicted with the universally accepted principles of freedom of the seas. In his Government's view there was no obligation on the part of States adhering to the three-mile rule to recognize claims of other States to a greater breadth. He hoped, however, that many States could come to realize the need for international agreement on the breadth of the territorial sea and on fishing rights, so that a régime of law might be established and the often conflicting national interests of States be prevented from jeopardizing the peace of the international community. His Government believed that such agreement was possible and would continue to lend its efforts to that end.

19. He expressed his delegation's high appreciation of the untiring efforts of the President, the officers and the secretariat throughout the Conference.

20. Mr. DE CASTRO (Philippines) explained that, although he had supported the Icelandic proposal (A/CONF.19/C.1/L.1/Rev.1) in committee, in plenary he had voted against it and against the Icelandic amendment (A/CONF.19/L.13) to the joint proposal because he felt that Iceland's best interests would be served just as well by the three-Power amendments (A/CONF.19/ L.12). He emphasized that his country viewed Iceland's special position with the greatest sympathy.

21. Mr. TUNCEL (Turkey) said that the Turkish delegation had voted against the Icelandic proposal because in its view the problem raised in it was satisfactorily dealt with by the amendments submitted by Brazil, Cuba and Uruguay (A/CONF.19/L.12). His delegation had abstained from voting on the Icelandic amendment to the joint proposal, because it felt that the dispute between Iceland and the United Kingdom was still unresolvable; at the 11th plenary meeting the United Kingdom representative had said that his Government would agree to submit the dispute to arbitration, but the statement made by the Icelandic representative at the 12th plenary meeting made it clear that the Icelandic Government was not prepared to accept that offer.

22. Lastly, the Turkish delegation had voted against the ten-Power draft resolution (A/CONF.19/L.9), because in its view it did not provide a satisfactory solution. New factors had emerged during the Conference, particularly in the joint proposal and the three-Power amendments thereto; thus the Conference had had no reason to defer its decision.

23. Mr. QUIROGA (Spain) said that his delegation had voted for both the joint proposal and the three-Power amendments thereto in a spirit of conciliation. But since no agreement had been reached on a new rule of international law governing the two questions before the Conference, the votes cast by his delegation could not be considered as imposing any obligation upon the Spanish Government; the rules in force for his country remained the same as before the convening of the Conference.

24. Mr. GARCIA AMADOR (Cuba) said that his delegation was sorry that no agreement had been reached on the substance of the two questions before the Conference, but hoped that such agreement might prove possible in a few years' time. In the meantime, the voting on the three-Power amendments had shown that there was a great weight of opinion behind recognition of the preferential rights of the coastal State in the fisheries in its adjacent seas wherever a special situation or special conditions made the exploitation of the living resources of the sea areas in question of vital importance to that State. The fact that those amendments had been adopted by such a large majority constituted a significant step in the development of international law.

25. He noted that the Soviet Union representative, while expressing his delegation's sympathy and understanding for Iceland's position, had nevertheless abstained from voting on the Icelandic proposal, on the ground that it transformed a special case into a general rule. The Cuban draft resolution, on the other hand, being couched in general terms, was not open to that objection; it covered not only the case of Iceland but also that or the under-developed countries in general. He was therefore somewhat surprised that the Soviet Union representative had seen fit to vote against it. Cuba, and no doubt other under-developed countries too, were grateful for the sympathy and understanding shown to them by the Soviet Union and other Powers, but sympathy and understanding alone were not enough; they needed to be translated into action.

26. As to the votes cast by the Cuban delegation, they were consistent enough to require no explanation.

27. Mr. TUNKIN (Union of Soviet Socialist Republics), replying to the Cuban representative, said that the Soviet Union delegation had voted against the Cuban draft resolution because its content lay outside the Con-

[2] *Ibid.*, document A/CONF.13/L.34.

ference's terms of reference. The subject was related to matters covered by the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas, the terms of which the Cuban draft resolution in effect tended to modify. The Soviet Union had not signed the Convention, and could not therefore support the Cuban draft resolution.

28. Hence there was nothing surprising in the vote cast by his delegation; the Cuban representative himself should rather be surprised at his own failure to win for his draft resolution the support of those States whose proposals he had himself so steadfastly advocated.

29. Mr. GARCIA ROBLES (Mexico) recalled that in the Committee of the Whole his delegation had voted in favour of the Argentine amendment (A/CONF.19/C.1/L.11), despite the fact that it had been submitted as an amendment to the joint proposal (A/CONF.19/C.1/L.10) which Mexico opposed, because the principle embodied in it was just and equitable.

30. The position was identical with regard to the votes cast by Mexico in favour of the three-Power amendments (A/CONF.19/L.12) and the Icelandic amendment (A/CONF.19/L.13) to the second proposal adopted by the Committee of the Whole (A/CONF.19/L.4, annex). The Mexican delegation favoured the principle enshrined in the amendments in question and it had therefore supported them, even though it had voted against the proposal to which they related.

31. In his earlier statements he had explained in detail the reasons for which his delegation had voted against the joint proposal (A/CONF.19/L.11) and had abstained from voting on the draft resolution submitted by Ethiopia, Ghana and Liberia (A/CONF.19/L.8).

32. His delegation regretted that the Conference had been unable to reach agreement, but did not believe that chaos would result from that failure. Rather, the situation was more favourable to an agreement than before the Conference had opened. Given time and patience, it might be possible at some future date to bridge the outstanding differences; it was already a remarkable achievement, in a matter like the breadth of the territorial sea which for many centuries had given rise to so many divergent views, that the difference should have been reduced to the issue between the advocates of six miles and those of twelve miles. When the appropriate time came, any Government would be free to raise the question in the General Assembly with a view to its final settlement.

33. Mr. ULLOA SOTOMAYOR (Peru), explaining his votes, read the statement contained in document A/CONF.19/L.16.

34. Mr. DEAN (United States of America) said that the United States delegation had been glad to see the great support commanded by the amendments submitted by Brazil, Cuba and Uruguay (A/CONF.19/L.12). He wished to make it clear, however, that his delegation had supported those amendments only within the context of the joint proposal (A/CONF.19/L.11) and in an effort to reach agreement. The United States delegation had not supported the terms of the amendments as an independent proposition.

35. Mr. NOGUEIRA (Portugal) said that his delegation had voted for the joint proposal and for the three-Power amendments thereto as a contribution to the efforts to reach a compromise solution. Unfortunately, no compromise had been forthcoming, and Portugal therefore considered that it was not bound by any commitment that might depart from the declared position of the Portuguese Government on the questions before the Conference.

36. Mr. TUNCEL (Turkey) was surprised that many speakers seemed to think that the work of the Conference was at an end. In his opinion, the Conference ought not to consider that it had failed to accomplish its task. There had, perhaps, been an undue tendency to consider problems exclusively from the legal angle, whereas a diplomatic or a political solution should have been sought. But there was still time for the Conference to change its methods, and he suggested that the President might convene the General Committee to consider the situation with which the Conference was faced. Given the spirit of conciliation that had prevailed throughout the discussions, the General Committee would perhaps feel that a continuation of the Conference's efforts for a few more days might enable it to find a formula likely to command general support.

37. Mr. GARCIA ROBLES (Mexico), speaking to a point of order, said that adoption of the Turkish representative's suggestion would mean reconsideration of the decision adopted unanimously by the Conference at its 7th plenary meeting on the recommendation of the General Committee about the closing date of the Conference and the date for the signing of the Final Act. In accordance with rule 32 of the rules of procedure, any motion along those lines would require a two-thirds majority for its adoption.

38. Mr. GLASER (Romania) hoped that the Turkish representative's suggestion would not be acted upon, because it could be conducive to reconsideration of the Conference's decisions. Such a course would be contrary to the dignity of States and would jeopardize the excellent understanding and mutual respect which had prevailed among participants throughout the Conference.

39. Mr. DREW (Canada) said that, disappointing though it was that it had proved impossible to obtain the required majority on the major issues, the Conference had achieved two positive results. It had adopted by a virtually unanimous vote a resolution on the subject of technical assistance, and it had given clear recognition to the special case of States whose economy was largely dependent upon fisheries. He hoped that at some future date the agreement which had been within sight at the present Conference would become reality.

40. With regard to the Turkish representative's suggestion, he agreed that there could be no more appropriate body than the General Committee to consider the situation and to make recommendations to the Conference. The General Committee represented both the various regions of the world and the various trends of opinion expressed at the Conference.

41. The PRESIDENT said that he had himself at one time considered the possibility of convening the General

Committee, but had decided not to put that suggestion to the Conference. What he had in mind was that the Conference should not end on a purely negative note, but that it might make recommendations to the General Assembly regarding possible action in a few years' time for settling outstanding questions.

42. Mr. SHUKAIRY (Saudi Arabia) said that, with the explanations of vote, the Conference had ended; the General Committee had no occasion to meet and no functions to perform. Any suggestion for the convening of a third conference should be made in the General Assembly of the United Nations. His delegation would support any proposal for placing an item on the subject on the agenda of the General Assembly at any future session.

43. Mr. TUNKIN (Union of Soviet Socialist Republics) said that the suggestion to convene the General Committee was nothing else but another attempt to gain time to exert further pressure on the Conference to reconsider its decision. If the object of the proposed meeting was to consider the possibility of convening a third conference that question was outside the Conference's terms of reference. Since the Conference could not delegate to the General Committee powers which it did not itself possess, there was no point in convening that body. The question of a third conference was a matter for the Governments of States Members and the General Assembly.

44. Sir Kenneth BAILEY (Australia) wholeheartedly supported the suggestions made by the representatives of Turkey and Canada. Before it closed the Conference ought to adopt some recommendations on the future conduct of studies on the international law of the sea.

45. The PRESIDENT asked the Canadian representative whether he wished to make a formal proposal.

46. Mr. DREW (Canada) said that he would not press the matter to a vote.

Adoption of conventions or other instruments regarding the matters considered and of the Final Act of the Conference

[Agenda item 10]

47. The PRESIDENT suggested that the Secretariat should prepare, under his guidance, an instrument on the pattern of the Final Act of the United Nations Conference on the Law of the Sea held in 1958.

It was so decided.

Closure of the Conference

48. The PRESIDENT said that it was a matter of great regret that the two vital questions of the breadth of the territorial sea and of fishery limits remained unsolved. That negative result had not been due to any lack of goodwill on the part of the participants, all of whom had desired agreement: it had been due to the inherent difficulties of the problems themselves, which required for their solution a delicate adjustment of the respective interests of the coastal State and the States concerned in the freedom of the seas.

49. He hoped that further efforts would be made to bring about an agreement on the two outstanding questions, an agreement which, in the words of General Assembly resolution 1307 (XIII), would "contribute substantially to the lessening of international tensions and to the preservation of world order and peace".

50. He thanked delegations for their co-operation and the officers of the Conference for their assistance. Cordial thanks were also due to the representative of the Secretary-General, to the Director of the European Office of the United Nations, to the Executive Secretary and to the special rapporteurs, as well to the entire Conference secretariat.

51. He declared the Second United Nations Conference on the Law of the Sea closed.

The meeting rose at 6.15 p.m.

SUMMARY RECORDS OF MEETINGS OF THE COMMITTEE OF THE WHOLE

FIRST MEETING

Monday, 21 March 1960, at 11 a.m.

Chairman: Mr. José A. CORREA (Ecuador)

Election of officers

1. The CHAIRMAN invited nominations for the office of Vice-Chairman.

2. Mr. GUNDERSEN (Norway) nominated Mr. Sörensen (Denmark).

Mr. Sörensen (Denmark) was elected Vice-Chairman by acclamation.

3. The CHAIRMAN invited nominations for the office of Rapporteur.

4. Mr. KORETSKY (Ukrainian Soviet Socialist Republic) nominated Mr. Glaser (Romania).

Mr. Glaser (Romania) was elected Rapporteur by acclamation.

Consideration of the questions of the breadth of the territorial sea and fishery limits in accordance with resolution 1307 (XIII) adopted by the General Assembly on 10 December 1958

5. The CHAIRMAN said that the Committee of the Whole would commence with a general discussion of item 9 of the Conference agenda. After the general discussion the Committee would proceed to consider concrete proposals. Both before and after the voting period, in accordance with the rules of procedure, delegations would have an opportunity of explaining their votes.

The meeting was suspended at 11.10 a.m. and was resumed at 11.35 a.m.

GENERAL DEBATE

Statement by Mr. Shukairy (Saudi Arabia)

6. Mr. SHUKAIRY (Saudi Arabia) stressed the fact that the present Conference, although officially known as the Second United Nations Conference on the Law of the Sea, was in fact a continuation of the first Conference, which had in effect been reconvened with the object of completing the work left unfinished in 1958. It was true that the General Assembly, in resolution 1307 (XIII), had described the four Conventions and the Optional Protocol formulated in 1958 [1] as " an historic contribution to the codification and progressive development of international law ", but the fact remained that the tasks that were still outstanding formed the crux of the whole undertaking. The unsettled issues were by far the most important ones: the breadth of the territorial sea, and fishery limits.

7. It could safely be asserted that the law of the sea could only be regulated once the breadth of the territorial sea had been satisfactorily and finally determined. Unless an acceptable formula were found for delimiting the territorial sea, the Conventions adopted in 1958 would remain a dead letter. Without a fixed delimitation of the territorial sea, there could be no high seas and no freedom of navigation. If the present Conference was unable to agree on the breadth of the territorial sea, it would be confronted with a situation where there was no law of the sea at all. The close interdependence of the various parts of the law of the sea, which had been recognized both by the International Law Commission and by the General Assembly, meant that all the work done in 1958 would be unavailing unless the Conference adopted an acceptable international instrument on the breadth of the territorial sea. He warned delegations that there were but two alternatives: complete success, or utter failure. The issue brooked no half solutions.

8. He would also warn delegations against undue complacency, since, despite the adoption of the four Conventions and the Optional Protocol, the achievements of the first Conference on the law of the sea had been limited. A comparison of the texts adopted in 1958 at Geneva with those put forward at the Codification Conference held at The Hague in 1930 showed that the position with regard to territorial waters had changed very little in the last thirty years. But much work had been done on the legal aspects of the subject in the meantime, and, although The Hague Conference had failed to reach agreement on the delimitation of territorial waters, it had prepared a draft convention on the legal status of the territorial sea,[2] which should be of value to the present Conference.

9. In his delegation's view, the breadth of the territorial sea was the key to the entire question of the law of the sea, in times of peace as in time of war; he mentioned war, because it could not be denied that the military aspects of the problem were of grave concern to some States. The far-reaching Conventions which had been adopted by the previous Conference, and which covered a whole gamut of special aspects of the law of the sea, would only become really effective when a generally acceptable solution to the problem of the territorial sea had been evolved. Moreover, such an agreed solution would, in the words of General Assembly resolution 1307 (XIII), " contribute substantially to the lessening of international tensions and to the preservation of world order and peace ".

10. In its endeavours to reach that goal, the Conference ought to be guided by the work already done by the International Law Commission, which had drafted, on

[1] *Official Records of the United Nations Conference on the Law of the Sea*, vol. II, annexes.

[2] League of Nations publication, 1930.V.16, pp. 212 ff.

the basis of expert legal opinion, a code covering the entire field of the international law of the sea.[3] The main principles embodied in that code had admittedly been adopted by the 1958 Conference; but that body had largely disregarded the Commission's conclusions on the breadth of the territorial sea, and, embodying in its conventions only faint shadows of the principles laid down by the Commission, had failed in its duty to take the forceful decisions in the matter that the Commission had asked it to take.

11. As the Commission had unanimously asserted, international practice was not uniform as regards the delimitation of the territorial sea, the limits claimed by States ranging all the way from three to two hundred miles. That lack of uniformity was of long standing, and had been recognized by eminent legal institutions, such as the High Court of Justice in the United Kingdom as long ago as 1916. The present Conference had been convened for the precise purpose of remedying that lack of uniformity — an achievement which had eluded The Hague Conference of 1930 and its Second Committee — and in so doing would do well to bear in mind two principles enunciated by the Commission: first, that " international law does not permit an extension of the territorial sea beyond twelve miles ";[4] second, that " The extension by a State of its territorial sea to a breadth of between three and twelve miles was not characterized by the Commission as a breach of international law ".[5] Thus, in the Commission's view, the three-mile limit was no longer an established rule of international law and the proclamation by a State of a twelve-mile limit for its territorial sea did not constitute an encroachment on the high seas.

12. He had presented to the 1958 Conference the results of comprehensive research which he had carried out on the three-mile rule, based on state practice, case law and treaty precedents — mostly from Anglo-American sources. Accordingly, on the present occasion he would confine himself to stating that the three-mile limit might be taken as a minimum, but not as a maximum. In support of his contention, he cited a number of authorities whose pronouncements as scholars of international law reflected state practice from the middle of the nineteenth century, as well as the Treaty of Peace, Friendship, Limits and Settlement concluded between the United States of America and Mexico in 1848, which had fixed the territorial sea of the two countries at nine nautical miles.

13. The International Law Commission had established the fact that a twelve-mile limit was supported by State practice, and had concluded that such a limit was not a breach of international law. The present Conference should be guided by that statement of the law enunciated by a body of distinguished jurists representing all the main legal systems of the world after exhaustive discussion and the closest study. He advocated the adoption of a formula along the lines suggested by the Commission, which represented a compromise providing the necessary degree of flexibility whereby States satisfied with a limit of less than twelve miles could maintain their traditional position, and those opting for the maximum of twelve miles could seek no further extension.

14. That formula also had the merit of being practical. States which had adopted or were advocating a twelve-mile limit formed a cross-section from all parts of the world that did not correspond to any particular political or economic grouping. Their attitude was the result of historical development flowing from a number of different factors, and adherence to a twelve-mile limit had inevitably created certain defence and economic interests which must not be jeopardized.

15. A maximum limit of twelve miles would not cause injury to States claiming less, and would not operate in a discriminatory manner, because it provided a comprehensive solution that should satisfy all and penalize none. Any other formula was bound to be discriminatory.

16. Before concluding, he felt obliged to mention the military aspect, which had previously been passed over in silence though very much in the minds of many. A maximum limit of twelve miles would not redound to any State's disadvantage, since it was non-discriminatory and allowed those which were at present claiming less to extend their territorial sea up to that distance if they though it necessary to do so to meet their military requirements. In any event, with the conquest of outer space and the development of the intercontinental ballistic missile, the sea would gradually lose its importance as the scene of warlike operations.

17. A twelve-mile limit, being realistic and equitable, offered the only chance of agreement. The Hague Conference of 1930 and the first United Nations Conference on the Law of the Sea had failed because they had obstinately refused to face the realities of international life.

18. He had sought to give a lucid picture of the situation in order to urge the Conference to seize its opportunity of acting in a statesmanlike manner.

The meeting rose at 12.35 p.m.

SECOND MEETING

Tuesday, 22 March 1960, at 10.45 a.m.

Chairman: Mr. José A. CORREA (Ecuador)

Consideration of the questions of the breadth of the territorial sea and fishery limits in accordance with resolution 1307 (XIII) adopted by the General Assembly on 10 December 1958 *(continued)*

General debate *(continued)*

Statements by Mr. Tunkin (Union of Soviet Socialist Republics) and Mr. García Amador (Cuba)

1. Mr. TUNKIN (Union of Soviet Socialist Republics) expressed the hope that the marked improvement in the climate of international relations, which had already

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[3] *Official Records of the General Assembly, Eleventh Session, Supplement No. 9*, pp. 4 ff.

[4] *Ibid.*, p. 4.

[5] *Ibid.*, p. 13.

had a beneficial influence on the fourteenth session of the General Assembly and the Conference on Antarctica, would do the same for the work of the present Conference. Although the first United Nations Conference on the Law of the Sea had not been able to complete its work in 1958, it had made a considerable contribution to the codification of the law of the sea. The USSR delegation hoped that the present Conference would make a new contribution by solving the closely linked problems of the breadth of the territorial sea and of fishery limits, which were both of vital concern to coastal States.

2. Hitherto, coastal States had themselves fixed the breadth of their territorial sea, with due regard for their own interests and circumstances. With a few exceptions, that breadth nowhere exceeded twelve nautical miles. It was the Conference's task not to establish a uniform breadth of the territorial sea applicable to all countries, but to agree upon a maximum limit. The International Law Commission, after a careful study of the legal status of the territorial sea, had concluded that international law did not permit its extension beyond twelve miles, from which it followed that any breadth of territorial sea up to twelve nautical miles was permissible under international law.

3. At the first Conference, many States, mindful of their independence and national security, of the need to protect their national fishing, and of the current trend in international practice, had been in favour of a twelve-mile limit. Other States, moved mainly by military and strategic considerations, had urged the adoption of a narrower limit — three or six nautical miles. The 1958 Conference had dealt the deathblow to the contention that the three-mile limit was a general rule of international law, and had shown that even a six-mile limit was not generally acceptable. For its part, the Soviet Union delegation had proposed that each State should fix the breadth of its territorial sea, in accordance with established practice, within the limits, as a rule, of three and twelve miles.[1] Certain objections having been raised to the wording of that proposal, his delegation was submitting to the second Conference a new proposal (A/CONF.19/C.1/L.1).

4. That proposal, which his delegation believed to reflect the best of current practice in the matter, was based on the premise that although a State had the right to extend its sovereignty over a belt of sea twelve nautical miles wide, it was not obliged to do so; it was free to extend its sovereignty over a narrower belt, but would then retain fishing rights up to the twelve-mile limit. The proposal also had an important bearing on the security of coastal States, some of which were at present vulnerable to intimidation by demonstrations of force in their coastal waters, even in time of peace. There had been instances of large-scale naval manoeuvres, reconnaissance by sea and by air and attempts to interfere with shipping by foreign forces in the coastal waters of certain States.

5. The debates on the breadth of the territorial sea at the first Conference proved that military and strategic considerations which had nothing to do with the preservation of peace and the development of international co-operation underlay the objections to fix a twelve-mile limit for the territorial sea. Indeed, although a proposal was adopted by the first Conference recognizing the right of a State to a twelve-mile zone for customs, sanitary, fiscal and immigration purposes, yet, when the Polish delegation proposed that in that zone the State should also have the right to prevent violations of its security, its proposal was rejected by those States which were against a twelve-mile limit for the territorial sea.

6. It was noteworthy that when at an early stage of the 1958 Conference it became clear that a three-mile limit for the territorial sea was doomed to failure, the United Kingdom, which had been resolutely opposing a twelve-mile territorial sea, agreed to extend the territorial sea up to six miles, provided ships, including warships, and aircraft of all nations would continue to enjoy the right of navigation beyond the three-mile limit.

7. The opponents of the twelve-mile limit for the territorial sea seemed therefore to be willing to admit that a State might exercise a wide range of rights in the twelve-mile zone, but under the express condition that the exercise of those rights should not interfere with the freedom of warships and aircraft of certain States navigating near foreign coasts. As such activities had not infrequently contributed to an increase in international tension, the acceptance of a twelve-mile limit could not fail to further the interests of world peace.

8. Adoption of the Soviet Union proposal would also promote the protection of coastal fisheries, which was a matter of grave concern to many States. Complete sovereignty over its coastal waters alone enabled a State to exercise fully its exclusive right to protect and exploit the living resources thereof. Moreover, as fish habitually migrated, conservation measures taken by a coastal State would redound to the benefit of other States exploiting the same resources outside coastal waters.

9. Lastly, the argument that the adoption of a twelve-mile limit for the territorial sea would restrict the freedom of navigation and result in longer trade routes and hence push up shipping costs and commodity prices was quite unfounded, given the generally recognized right of innocent passage for merchant shipping through territorial waters. Furthermore, the free passage of ships and commercial aircraft along established international routes which crossed the waters of foreign States was adequately safeguarded in specific multilateral and bilateral agreements which would not be affected by an agreement on the breadth of the territorial sea.

10. He emphasized the dangers of adopting texts which were condemned in advance to remain a deal letter, as many international conferences had done. Although the rules of international law were the outcome of agreements between States, such agreements, like the development of international law generally, rested upon certain laws of social development, and any text which did not conform to those laws and to the facts of reality must be fruitless. The success of the present Conference would depend on the elaboration of rules that would meet such needs. The past decade had displayed a definite trend towards an extension of the breadth of the territorial sea. That trend sprang naturally from radical changes in the international situation, from recent

[1] *Official Records of the United Nations Conference on the Law of the Sea*, vol. III, annexes, document A/CONF.13/C.1/L.80.

technical advances, and from the drive of many States to safeguard their security and independence and to defend their economic interests. At the previous meeting the Saudi-Arabian representative had righly pointed out that the twelve-mile limit was commended by States in different continents and with different political and social systems; the freshly emergent States in many parts of the world were particularly anxious to establish a twelve-mile territorial sea.

11. The Soviet Union proposal thus reflected a progressive trend, and was in harmony with such new principles of international law as the right to self-determination and the right to fetterless exploitation of national resources — principles which lay at its very root. In the opinion of the Soviet delegation, the Conference should seek not temporary and improved solutions which might have only a negative effect on the development of international co-operation, but the establishment of rules of international law in conformity with the present situation and trends.

12. Mr. GARCIA AMADOR (Cuba) said that at the 1958 Conference the Cuban delegation had taken only a limited part in the debates on the breadth of the territorial sea and fishery limits, not because of any lack of interest in those questions, but because it had wished to learn the views of other delegations and to acquaint itself with the prevailing trends of opinion before taking a definite position in the matter.

13. Certain conclusions could be drawn from the proceedings of the 1958 Conference. With regard to the breadth of the territorial sea, it was clear that the principle of the marine league no longer enjoyed general support, as had been shown by the small number of delegations which had then advocated its recognition. The 1958 Conference had also revealed that very few States objected to the extension of the territorial sea up to a breadth of six nautical miles. But none of the proposals seeking to authorize the extension of the territorial sea beyond six nautical miles had commanded a majority in 1958.

14. Although there had been some changes in the attitude of States in the interval between the two Conferences, none of them had materially affected the general pattern of views held on the breadth of the territorial sea. The Cuban delegation was therefore inclined to focus its attention on the fishing rights claimed by certain States in sea areas beyond a distance of six miles from their coasts, since that issue would probably be the crucial one at the present Conference.

15. The rights which it was proposed to confer upon the coastal State in the matter of fishing could be either exclusive rights or simply preferential rights. Considering that the living resources of the sea were legally *res communis*, claims to exclusive fishing rights beyond the outer limit of the territorial sea would, by the traditional principles of international law, be subject to categorical rejection. However, the idea of conferring upon the coastal State exclusive rights in respect of the conservation, and even the exploitation, of certain living marine resources, or of all of them, beyond the limits of the territorial sea was not inconsistent with international law in the latter's present stage of development, for the reason that those rights would safeguard the special interest of the coastal State, a special interest which had gained recognition at international conferences, including the 1958 Conference on the law of the sea.

16. A coastal State could have a special interest in certain living resources of the sea because of the vital importance of its coastal fisheries to its economy or food supply. But that special interest could never justify the complete exclusion of foreign fishing craft from the fishing ground concerned. Such absolute exclusion would be justified only in the interests of optimum sustainable yield. So long as the productivity of a fish stock or stocks was not affected, the coastal State could not exclude foreign fishermen from harvesting those resources elsewhere than in its internal waters or territorial sea, for such exclusion would be inimical to mankind's interest in one of its most important sources of food and would also ride roughshod over the historic rights of States whose nationals had consistently fished the sea areas in question from time immemorial.

17. Most of the difficulties — perhaps, indeed, all of them — would be overcome if preferential rather than exclusive rights were conferred on the nationals of the coastal State. The 1958 Conference itself had adopted a resolution along those lines.[2] The resolution recommended the recognition of the " preferential requirements of the coastal State resulting from its dependence upon the fishery concerned while having regard to the interests of other States " wherever it became necessary, for the purpose of conservation, to limit the total catch of fish in an area of the high seas adjacent to the territorial sea of the coastal State. The scope of the resolution, however, was limited to the " situation of countries or territories whose people are overwhelmingly dependent upon coastal fisheries for their livelihood or economic development " and to the situation of " countries whose coastal population depends primarily on coastal fisheries for the animal protein of its diet and whose fishing methods are mainly limited to coastal fishing from small boats ".

18. Another shortcoming of that text was that it failed to recognize the right of countries in either of the two groups cited to adequate or effective means to protect their special interests and needs. Moreover, since the rights involved were preferential and not exclusive, they should have been recognized on a more liberal basis. The two cases covered by resolution VI were exceptional ones. A much more common case was that of a coastal State whose nationals were habitually engaged, in a sea area contiguous to its territorial sea, in fishing activities which were of economic importance to it. That third instance of special interest on the part of the coastal State should be equally acknowledged.

19. Recognition in all three cases of effective preferential rights in favour of the coastal State was the minimum concession the non-coastal States could make to the special interest of such States. That recognition would go a long way towards satisfying the requirements which had led certain States to make extensive claims in respect of the breadth of their territorial sea, claims which were largely intended to safeguard needs in respect of fisheries. The preferential rights of the coastal State could, in certain

[2] *Ibid.*, vol. II, annexes, document A/CONF.13/L.56, resolution VI.

cases, even justify the exclusion of foreign fishermen, if such exclusion became necessary for purposes of conservation, in other words, where the total catch of a stock or stocks of fish had to be substantially curtailed. Maximum protection would thus be given to the legitimate interests of the coastal State in a way which would be impracticable with a contiguous zone that must necessarily be limited in scope. Moreover, that desirable result would be attained without conferring upon the coastal State rights and obligations unrelated to fisheries, and prerogatives which it might exploit to the detriment of the legitimate interests of others.

20. There remained the important question of historic fishing rights — one of great interest to Cuba. Such rights would come into conflict with the rights of the coastal State wherever the latter extended its territorial sea beyond the traditional limits or claimed exclusive rights in respect of fisheries beyond the outer limit of the territorial sea, thereby affecting areas of the high seas in which the nationals of another State had been fishing constantly from time immemorial. The State whose nationals had thus traditionally fished an area of the high seas could be said to have acquired prescriptive fishing rights in that area; those rights could carry even greater weight than those of the coastal State itself—for example, where the latter's nationals engaged in little or no fishing activity in the area. And that argument was even more cogent where the activities of the nationals of the coastal State were such that they could not possibly affect the productivity of the local fish stock or stocks.

21. The situation was changed if the rights accorded the coastal State were preferential and not exclusive. Preferential rights would justify limitation of the total catch of fish only where that was essential to proper conservation—in other words, to maintain or restore the optimum sustainable yield of a fish stock or stocks. The attainment of that objective was of concern to all States whose nationals fished the resources, and their general interest would be served even when it became necessary temporarily to exclude fishing by States other than the coastal State in the interests of conservation. But experience showed that conservation did not normally demand such drastic curtailment of fishing. Nevertheless, where a conflict arose between historic rights and the preferential rights of a coastal State, the latter should prevail in the two cases envisaged by resolution VI of the 1958 Conference. That solution was consistent with contemporary trends in international law, as evidenced by the proceedings of the 1958 Conference. The only prerogative which could be recognized in that situation if a State possessed historic rights was the right to special or preferential treatment as compared to other non-coastal States. It would be illogical and unfair, when placing restrictions on fishing, to treat identically one State whose nationals had been fishing uninterruptedly and from time immemorial in certain sea areas and another whose nationals had only recently begun to fish there.

22. The position was different in the third of the three cases mentioned earlier—namely, that of a coastal State whose nationals were habitually engaged, in an area contiguous to its territorial sea, in fishing activities which were of economic importance to it. But there could be not doubt that the special interest of the coastal State should, even in that third type of situation, prevail over the interests of non-coastal States in general. Where historic rights could be invoked, however, reason and justice required that those rights be given equal protection with the preferential rights of the coastal State. If it became necessary for the purposes of conservation to limit the total catch of a stock or stocks of fish in a given area, both the nationals of a coastal State therein and those of a State possessing historic rights were entitled to the same preferential treatment over foreign fishermen. As a rule, such treatment of historic rights would not materially affect the interests of the coastal State; indeed, it would not affect those interests at all in cases where the nationals of the State invoking its historic rights exploited the resources concerned on such a small scale that their productivity was unaffected.

The meeting rose at 11.50 a.m.

THIRD MEETING

Wednesday, 23 March 1960, at 10.45 a.m.

Chairman: Mr. José A. CORREA (Ecuador)

Consideration of the questions of the breadth of the territorial sea and fishery limits in accordance with resolution 1307 (XIII) adopted by the General Assembly on 10 December 1958 *(continued)*

General debate *(continued)*

Statements by Mr. Tuncel (Turkey), Mr. Mau (Republic of Viet-Nam and Mr. Martínez Moreno (El Salvador)

1. Mr. TUNCEL (Turkey) associated himself with the appeal for wisdom, skill, patience and conciliation on the part of all delegations, made by the President of the Conference at the first plenary meeting. Circumstances were more propitious to agreement than they had been in 1958, because States appeared to be better prepared for the examination of the complex problems involved. The almost continuous contacts maintained since the first United Nations Conference on the Law of the Sea had certainly contributed greatly to a better understanding of the various issues, and he hoped that all those taking part would do their best to smooth out divergencies of view arising from conflicting economic or political interests.

2. In 1958, the Turkish delegation had declared itself willing to accept a three-mile limit to the territorial sea if that proposal commanded general support.[1] However, it was no exaggeration to say that States were tending to claim greater breadths. His delegation believed that in dealing with that issue the present Conference should endeavour to ensure freedom of navigation and flight to the greatest possible extent.

[1] *Official Records of the United Nations Conference on the Law of the Sea*, vol. III, 14th meeting, para. 36.

3. In attempting to reconcile conflicting economic interests, the Conference would undoubtedly take into consideration the fact that some States deployed considerable resources and manpower for fishing in zones contiguous to the territorial sea of other States, whereas for coastal States the zones contiguous to their own territorial sea were important because they contained rich fishing grounds. In addition, the present and future interests of under-developed countries, as well as of those countries whose peoples depended on fisheries, either economically or as a source of food, had to be taken into account. As the work proceeded it would become easier to see how those conflicting claims could be satisfied, and he urged the interested parties to display mutual understanding. When the question of world fishing grounds was considered from that angle, it seemed that the problem of fishing was a regional one, and that it could therefore be solved better by means of bilateral or regional agreements. Any formula the Conference might ultimately adopt would have to recognize the fishing rights of coastal States within a zone up to twelve miles broad.

4. He pledged his delegation's full co-operation in the joint effort to reach agreement: as the President had warned the Conference, failure to do so would serve neither the interests of the participating States not those of the peoples of the world.

5. Mr. MAU (Republic of Viet-Nam) observed that it had been wrongly said that the first United Nations Conference on the Law of the Sea had failed to achieve its purpose. That purpose had been to single out from a mass of unilateral practices anarchically applied those which corresponded to rules of law, so that they could subsequently be adapted to the new needs of mankind and to the aspirations of emergent States. The results of the first Conference had been encouraging in that the ground had been cleared and divergent points of view brought closer together. In particular, the first Conference had achieved a positive result of unsuspected scope by emphasizing the principle that a distinction must be drawn between the determination of the breadth of the territorial sea and that of fishery limits, a principle by which the powers of coastal States would not be cut off abruptly at the outer limit of their territorial sea, but would rather become gradually less as the distance from the coast increased. This principle led to the recognition of a stretch of fishing waters for the enjoyment of coastal States outside their territorial sea. His delegation would base itself on that principle in defining its position on the two items under discussion.

6. With regard to the breadth of the territorial sea, it should be remembered that at the first Conference it had transpired that the so-called three-mile limit could not be maintained, despite the support lent to it by the leading maritime powers, because it did not correspond to any rule of positive law that could be imposed on the international community as a whole. It was for the second Conference to establish a universally valid rule. The fact that the States traditionally attached to the breadth of three miles had come to accept the principle of a six-mile limit was encouraging, since it gave grounds for hope that those States which had hitherto pressed for the adoption of a breadth of twelve miles would in turn consider making concessions.

7. Furthermore, the provisions governing the contiguous zone and the explicit recognition of a fishing zone situated outside the territorial sea would in practice offset any concessions granted. The Viet-Nam delegation believed that the Conference should be guided by the principle of the freedom of the high seas, since extension of the breadth of the territorial sea to twelve miles would be an encroachment on the common heritage of the resources of the sea. Any proposal which would have each State free to choose for itself between a width of three miles and one of twelve miles involved a risk that must not be lost sight of, because if the Conference were to adopt such a proposal, far from rendering a service to mankind, it would not only allow the prevailing confusion to subsist but would give it legal sanction.

8. The Government of the Republic of Viet-Nam was therefore in favour of adopting a uniform width of six miles. It was self-evident that the new six-mile limit would have to be applied within the framework of the provisions of the Convention on the Territorial Sea and the Contiguous Zone. In particular, when the coasts of two States were opposite or adjacent, the median line was that which should form the limit of their respective territorial seas. His delegation attached great importance to that statement, since the Republic of Viet-Nam possessed the Phu-Du Archipelago, near Phu-Kwok Island, which extended along the coast of Cambodia at a distance of less than six miles from it. The Government of Viet-Nam accordingly reserved all its rights over the archipelago, over which it exercised exclusive sovereignty, together with its rights over the territorial sea surrounding it, in accordance with the provisions of conventions already adopted.

9. Turning to the question of the determination of fishing limits, he said that it would be for the Conference to elaborate the principle already accepted at the first Conference, that the fishing rights of coastal States extended beyond their territorial sea. There could be no uniform solution to that problem, which brought the interests of coastal States and those of non-coastal States into conflict; it would be more realistic to deal with special situations on their merits. Most coastal States would, it seemed, be prepared to agree to a uniform determination of fishing limits. But it must not be forgotten that flagrant injustices might result from such rigidity. For some countries, including Viet-Nam, coastal fisheries were of vital importance; the rich harvest of the sea provided the people's daily food. Moreover, such countries still had but very rudimentary fishing craft and gear, which would restrict their activities to coastal fishing for a long time to come. It would therefore be unfair to impose on them the limits fixed for States which were technically equipped for intensive fishing on the high seas. It was those considerations which had moved the Viet-Nam delegation, in company with the Philippines delegation, to submit to the 1958 Conference a proposal [2] according to which the fishermen of a coastal State who derived their subsistence and that of the other inhabitants from fishing, and who engaged in fishing mainly on the coasts of that State, would have a preferential fishing right in a given area

[2] *Official Records of the United Nations Conference on the Law of the Sea*, vol. V, annexes, document A/CONF.13/C.3/60.

of the high seas off the coasts of the said State. It had also been laid down that no coastal State was entitled to prohibit the nationals of other States from fishing within that zone, once the needs of its own population had been reasonably secured. That proposal had unfortunately not been adopted. Nevertheless, the situation of countries where the basic food supply of the population came from coastal fisheries and where the methods used were essentially those of local fishing, deserved special legal protection. For that reason, the Viet-Nam delegation intended to re-submit the problem to the second Conference. The claims involved were reasonable ones, intended to secure recognition of a preferential right that would amount to no more than strict justice.

10. Non-coastal States would be affected in varying degrees, according to their situation, by such extension of coastal rights. It was therefore not feasible to subsume them under one single category, and it was for the Conference to find an equitable solution to that problem. A compromise might perhaps be reached by recourse to the idea of a preferential right based on suitable criteria.

11. Mr. MARTINEZ MORENO (El Salvador) said that the importance of the questions of the breadth of the territorial sea and of fishery limits was self-evident, because the natural resources of sea areas contiguous to coasts were a source of immense wealth. For some countries that wealth merely provided an opportunity of increasing national income and conducting profitable activities; but for many of the so-called under-developed countries it represented a major part of their limited national resources. The difficulties obstructing a settlement were enhanced by the international anarchy prevailing in state claims over sea areas, and by the changing and sometimes inconsistent attitude taken by certain countries at different times in order to protect their transient interests under changing conditions. It was for those reasons that the fathers of the *mare clausum* doctrine had now become the ardent defenders of unrestricted freedom of the seas, and that certain countries, whose apparent claims regarding the territorial sea did not involve a breadth exceeding twelve miles, applied such peculiar methods of measurement that it was virtually impossible to establish the true extent of their claims.

12. In the case of El Salvador, there was the additional difficulty that the extent of the territorial sea was laid down in the Constitution, which was not of the flexible type. That instrument stipulated for the territorial sea a breadth of 200 nautical miles measured from the low-water mark, with the explicit proviso that El Salvador recognized and guaranteed international freedom of navigation in the widest sense.

13. Despite the explicit terms of his country's Constitution, his delegation, in a spirit of conciliation, wished to announce that if the Conference succeeded in concluding specific agreements on the questions that had been referred to it, the Government of El Salvador would submit to the Legislative Assembly proposals seeking to ensure that the provisions of the Constitution would be implemented in harmony with internationally agreed rules, by establishing a zone of absolute freedom of fishing and navigation in the wide belt of the country's adjacent waters.

14. For his country, the observance of rights established by the law of nations was more important than the determination of the breadth of the territorial sea and fishery limits. But the basic aims of the law of nations would not be served if, for example, agreement was reached on a definite breadth for the territorial sea while at the same time the right of innocent passage was not respected. El Salvador, as his delegation had stated in the general debate in the First Committee at the 1958 Conference,[3] was more concerned with the enforcement of the principles of international law than with their formulation, and preferred for its part to have a wider territorial sea while respecting the rights of others in it; that situation was better than one in which a narrow territorial sea was combined with abuse of the principle of the freedom of the seas.

15. El Salvador had never endeavoured to win recognition as a general principle of international law for its own rules on the breadth of the territorial sea. It considered that every State was entitled to fix the breadth of its own territorial sea, provided that it did so with due regard for the rights of other States. He drew attention in that connexion to the opinion expressed by the eminent Cuban jurist, Mr. Bustamante:

> "No nation can rightly constitute itself the judge and sovereign of another, refusing to recognize the legitimate and necessary exercise of its authority on the seas or on land. Certainly, a country having three miles as the limit of its territorial sea, and which refuses to recognize four miles to another, would strongly protest if one or more States were satisfied with two miles and notified it that they were not agreeable to accepting the third mile. And this the more so as, in the course of history, the same claimant nation, wishing to impose its will as a law for the world, will in past days have had different legal measures to this end." [4]

16. One of the most remarkable features of the international scene over the past ten years had been the emergence of a strong interest on the part of the statesmen of all countries to promote the economic development of the under-developed areas of the world with the aim of raising the living standards of the inhabitants of those areas. It was with that aim in view that many States whose nationals had until recently not engaged in fishing, and whose waters had at times been subjected to over-fishing by foreign fishermen, had begun to assert their legitimate rights. A number of Latin-American countries, including Costa Rica, Chile, Ecuador, Honduras and Peru, had claimed in the past, or were still claiming, jurisdiction over a sea belt 200 miles wide; certain other countries, such as Argentina and Uruguay, had, with considerable logic, contended at meetings of American States that States enjoying rights over the continental shelf, which in places extended to some 400 miles from their coasts, should enjoy similar rights in respect of the superjacent waters. He also drew attention to the defence zone established by the American republics, which was still in force and which extended 300 nautical miles offshore.

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[3] *Ibid.*, vol. III, 16th meeting, para. 24.

[4] Antonio Sanchez de Bustamente y Sirven, *The Territorial Sea* (New York, Oxford University Press, 1930), p. 107, para. 157.

17. It was no doubt for that reason that Mr. François, the Special Rapporteur of the International Law Commission, in his second report on the high seas (A/CN.4/42),[5] had expressed the view that the coastal State should have the right to adopt conservation measures and measures against pollution of the sea by oil over a belt 200 miles wide.

18. El Salvador had consistently shown the most scrupulous respect for the freedom of peaceful navigation, the freedom of fishing, the freedom to make commercial flights over the territorial sea and the freedom to lay submarine cables and pipe-lines. In his delegation's opinion, the Conference should focus its attention on securing effective protection for the rights of the international community, particularly in view of the fact that the special interest of the coastal State in fisheries had been recognized as well as the sovereign rights of States over their continental shelf. The determination of the breadth of the territorial sea and fishery limits would no doubt constitute a victory for the rule of law; but it was even more important that, whatever the limits established — and in view of the pressing human and social needs of the day it was clear that those limits could not be narrow — the rights of the international community in the sea areas concerned should be adequately and effectively protected.

The meeting rose at 11.50 a.m.

[5] Original French text published in *Yearbook of the International Law Commission, 1951*, vol. II (United Nations publication, Sales No.: 1957.V.6, vol. II), p. 75. English translation mimeographed.

FOURTH MEETING

Thursday, 24 March 1960, at 10.45 a.m.

Chairman: Mr. José A. CORREA (Ecuador)

Consideration of the questions of the breadth of the territorial sea and fishery limits in accordance with resolution 1307 (XIII) adopted by the General Assembly on 10 December 1958 *(continued)*

General debate *(continued)*

Statements by Mr. Petrén (Sweden), Mr. Dean (United States of America), Mr. Moreno (Panama) and Mr. Radouilsky (Bulgaria)

1. Mr. PETREN (Sweden) observed that there were many States which were unable to accept a breadth of twelve nautical miles for the territorial sea or for contiguous zones in which the coastal State would enjoy exclusive fishing rights. Sweden was one of them, and the Swedish delegation had already explained, at the first United Nations Conference on the Law of the Sea, the legal and practical arguments on which its position rested. He would not repeat those arguments, but wished to remind the Committee that the questions of the breadth of the territorial sea and of fishing limits must be considered in the context of current law. Some delegations which were in favour of extending the breadth of the territorial sea to twelve miles had wrongly interpreted article 3 in the rules drawn up by the International Law Commission,[1] which merely stated that an extension of the territorial sea beyond twelve miles was certainly inadmissible. The differences of opinion which had emerged later had prevented the Commission from reaching a decision on any breadth of the territorial sea within that limit. The Swedish Government was of the opinion that international practice, as a general rule, did not admit limits for the territorial sea beyond six nautical miles. Certain States had recently proclaimed an extension of the breadth of their territorial sea to twelve miles, thus appropriating to themselves vast stretches of waters hitherto regarded as part of the high seas, but those unilateral decisions had elicited an array of protests from the international community. The Swedish delegation rejected the argument that the mere fact that the interest of a coastal State demanded that it unilaterally extend its territorial sea was sufficient to confer upon such extension the sanction of law, even though it was highly detrimental to the traditional interests of one or more other States.

2. The danger of such ideas to good international relations was patent. Admittedly, law must be as free to develop in the maritime as it was in other spheres, but that development must be compatible with fundamental principles and must proceed with the concurrence of as many States as possible. It had been that concern for caution which had led the Swedish delegation to propose at the first Conference that the breadth of the territorial sea should be fixed by the coastal State, but that it should not exceed six nautical miles.[2] That in itself would entail a generous concession on the part of States which normally recognized only narrower territorial seas. An extension of the breadth of the territorial sea would injure the interests of the international community, especially in the matter of navigation.

3. With regard to fishing limits, the Swedish Government was not convinced of the need for creating such zones in which fishing rights would be reserved exclusively to the coastal States. The Convention on Fishing and Conservation of the Living Resources of the High Seas was relevant in that connexion. Adopted at the first Conference for the purpose of protecting and preserving stocks of fish and other biological resources of the high seas, that instrument paid due regard to a coastal State's special interest in maintaining the productivity of biological resources in every part of the high seas adjacent to its territorial sea. The first Conference had also adopted a resolution [3] dealing with the situation of countries or territories whose people were over-whelmingly dependent upon coastal fisheries for their livelihood and whose fishing methods were mainly limited to local fishing from small boats. That resolution recommended that the preferential requirements of the coastal State should be recognized, while having regard to the

[1] *Official Records of the General Assembly, Eleventh Session, Supplement No. 9*, p. 4.

[2] *Official Records of the United Nations Conference on the Law of the Sea*, vol. III, annexes, document A/CONF.13/C.1/L.4.

[3] *Ibid.*, vol. II, annexes, document A/CONF.13/L.56, resolution VI.

interests of the other States. In the Swedish delegation's opinion, the provisions of the Convention and the resolution should suffice to safeguard the legitimate interests of coastal States. They might be taken as a basis for drafting detailed instruments for each particular case, a procedure that would be better than fixing general and rigid rules that could not possibly take account of the special situation of every coastal State.

4. The Swedish Government was opposed, therefore, to the establishment, by virtue of a general resolution, beyond the territorial sea of fishing zones reserved to the coastal State. The Swedish delegation had been moved solely by a spirit of compromise in voting at the first Conference for the draft resolution submitted by the United States delegation involving the recognition of such fishing zones, in which, however, the acquired rights of States other than the coastal State had to be upheld.[4] As that draft resolution had not commanded the two-thirds majority, the Swedish Government considered itself free to revert to its principles.

5. Mr. DEAN (United States of America) said that, although a large measure of agreement had been reached at the first United Nations Conference on the Law of the Sea, the Conference had been adjourned with its work only partially completed, not because the possibilities for agreement had been exhausted, but for lack of time. His Government believed that agreement on the two issues before the present Conference was intrinsically of great importance, and that it could be achieved if countries allowed themselves to be guided by a spirit of compromise. So long as the crucial question of the reach of a State's sovereignty over the waters adjacent to its coast was unresolved, the law of the sea could not be regarded as having become a subject of international accord, and the purpose of the 1958 Conference—namely, to promote the progressive development and codification of international law in the maritime sphere—would remain unfulfilled. Furthermore, the absence of international agreement on the issues before the Conference had in recent years begun to disturb hitherto amicable relations among countries with regard to the law of the sea, and lack of clarity in those aspects of the law had given rise to disputes. He did not need to dwell on the grave dangers inherent in such uncertainty, but wished to emphasize that failure to reach agreement at the present Conference would be a serious and unfortunate mistake. His Government regarded the present Conference as a resumption of the previous friendly deliberations and believed it appropriate to resume efforts at compromise where those deliberations had ended in 1958. Many countries, including his own, had preferred solutions to the issues before the Conference. In order to obtain agreement it would be necessary to refrain from pressing them, however.

6. The United States Government believed that a three-mile limit to the breadth of the territorial sea was in the interests of all nations, large and small, and preferred that there should be no exclusive fishing jurisdiction beyond that limit. In its view, efforts to maintain and improve the yield of fisheries were more likely to succeed when based on realistic conservation agreements between the parties concerned than when based on arbitrarily established lines in the ocean, which, indeed, would in many cases complicate such efforts. His country's position regarding the breadth of the territorial sea had been historically determined by its acceptance of the doctrine of freedom of the seas: the fundamental principle that the high seas were *res communis* and that no part of them could be unilaterally appropriated by any State for its own use without the concurrence of other States. The United States of America believed that the three-mile limit, which it had itself adopted in 1791, had well served the needs and interests of the international community, and was still the best suited to the needs of all nations.

7. Turning to some practical problems of navigation created by extension of the breadth of the territorial sea, he pointed out that, to see the shore-line at a distance of twelve miles a navigator's eye would have to be 110 feet above the water, a height rarely attainable on commercial or fishing vessels; to be seen, even under ideal conditions from a standard height of, say, 15 feet, from the same distance, any shore navigational aid would have to be at least 44 feet high. Many convenient charted landmarks visible from three miles would no longer be visible from twelve miles, and the "international lights" (as defined by the Fifth International Hydrographic Conference held at Monaco in 1947) would probably be too far apart to be of use for accurate fixing; secondary systems of lights and buoys would not be visible at such range. It had been estimated, moreover, that only one in five of the world's lighthouses had a range of twelve miles or more. It was therefore conceivable that a nation's entire system of navigational aids mights have to be rebuilt — perhaps even entirely replaced by an electronic system — to meet the new conditions imposed by an extension of the territorial sea to twelve miles. Finally, it would be virtually impossible for most merchant ships to anchor in waters twelve miles off-shore, where depths of 700 fathoms were often met.

8. It had been argued that the three-mile limit favoured the maritime nations more than other nations at present less active on the seas, but only by maintaining maximum freedom of the seas could all nations use the high seas to the fullest advantage in their development. Adherence to such a principle would allow the most direct and efficient routes to be used, thus helping to keep down transportation costs to the benefit of all nations. In the self-interest of all nations, that limit should be continued. The United States would, therefore, adhere to that limit if agreement could not be reached at the Conference.

9. He emphatically denied that the International Law Commission had implied, at its eighth annual session, that any breadth of territorial sea beyond three miles was authorized under international law, and quoted from the statement made by Mr. François, the Commission's Special Rapporteur on the subject, at the first Conference. Mr. François had confirmed that the Commission had expressed no opinion on whether it was lawful or unlawful to fix the breadth of the territorial sea between three and twelve miles.[5]

[4] *Ibid.*, vol. II, 14th plenary meeting, para. 60, and annexes, document A/CONF.13/L.29.

[5] *Ibid.*, vol. III, 21st meeting, annex, para. 18.

10. He had adduced those arguments in favour of the three-mile limit, not because his Government was unwilling to seek a new rule provided others accepted it, but to remind the Conference of the reluctance with which his Government had decided that a proposal for a territorial sea broader than three miles should, in the circumstances, be submitted or supported by his country in order to secure agreement. He recalled that at the first Conference his delegation had proposed a six-mile territorial sea with an additional six-mile fishery zone under the jurisdiction of the coastal State, in which additional zone unlimited fishing by other States which had previously fished there might continue.[6] That proposal had been generally recognized as an honest and serious effort to reach a compromise, and thus had come closer than any other to adoption. But the proposal submitted by the Soviet Union at the last Conference and presented again at the present Conference (A/CONF.19/C.1/L.1) was not, in his opinion, a true compromise, although it might seem so to some by virtue of the apparent option it offered. Under such a régime of international law, nations preferring the narrowest limits for the territorial sea would in practice find themselves discriminated against, and would therefore find it increasingly difficult to adhere to such a narrow limit. Once many had chosen the greatest limit allowed, others would feel constrained to claim it too.

11. The United States Government believed that a twelve-mile territorial sea, whether by permitted option or otherwise, would be extremely prejudicial to the interests of the vast majority of the nations of the world. An extension of the territorial sea to twelve miles would bring most of the maritime routes of the world within territorial waters at some point in their length. Such an extended reach of national sovereignty over the sea would have a serious bearing on the absolute rights of transit through or over more than one hundred important international straits now part of the high seas. In the absence of a treaty or bilateral agreement, aircraft would have no right to fly over those straits, and the rights of passage of vessels would be altered. Because of those important considerations his Government could not foresee that any proposal for a width of territorial sea beyond six miles could be favourably entertained.

12. He recalled that, at the first Conference, a proposal had been submitted for a territorial sea of six miles coupled with a six-mile contiguous zone in which the coastal State would have exclusive fishing jurisdiction.[7] Such a proposal would undoubtedly find favour at the present Conference, as it had at the first, with certain coastal States that wished to secure exclusive fishing rights over a twelve-mile zone. Such a régime, however, would seriously affect the interests of a number of foreign States which had fished in the high-seas areas concerned for generations, and even centuries, many of them small countries for whom such exclusion would constitute a vital loss. It was therefore only fair that any fishing previously carried on in a high-seas area affected by extended jurisdiction should be taken into account in the formulation of a rule extending the fishing jurisdiction of coastal States. The United States delegation had not supported that proposal in 1958, because of the serious effect its adoption would have had on important United States fisheries and, even more so, on those of other countries.

13. At the first Conference some countries had objected to the fact that the United States compromise proposal had placed no limitation on future expansion of foreign fishing in the proposed outer six-mile zone. Within the time remaining at the disposal of the Conference it had not been possible to find a solution to that problem. After careful study and consultation with other countries, his Government had now concluded that some such limitation was practicable, and was therefore re-submitting its proposal with the incorporation of an important proviso to that effect. His delegation believed that the new proposal (A/CONF.19/C.1/L.3) was a practicable and reasonable compromise and one on which both coastal and fishing States should find it possible to agree. In effect, it would give coastal States additional and undisputed exclusive fishing jurisdiction in a zone three to six miles offshore, as well as fishing jurisdiction in a further contiguous nine or six miles of the high seas — in other words, a maximum of twelve miles — subject only to such foreign fishing in the outer six-mile zone as had been carried on in a base period. No increase in such foreign fishing would be permitted above the level that had prevailed in the base period, thus reserving for the coastal State all increased productivity in the area concerned. Under the proposal, States would in effect acquire exclusive jurisdiction over fishing in the outer six-mile zone in all cases where there had been little or no foreign fishing in that zone during the base period. He believed that would apply to most countries of the world. The proposal did not, however, attempt to deal with exceptional situations in which the economy of the State was overwhelmingly dependent on its coastal fisheries. His Government recognized that such situations existed and created problems to which the Conference should give sympathetic and careful consideration. His delegation was prepared to discuss with other delegations the matter of special treatment in the outer six-mile zone in such circumstances, and to consider appropriate proposals.

14. The United States delegation was ready to discuss the terms of its proposal, which it hoped would receive the widest possible support and contribute to the success of the Conference. It was prepared to give careful consideration to the views and suggestions of all countries.

15. Mr. MORENO (Panama) recalled that, in its resolution 1307 (XIII), the General Assembly had expressed its belief that agreement on the " two vital issues " of the breadth of the territorial sea and fishery limits " would contribute substantially to the lessening of international tensions and to the preservation of world order and peace ", thereby recognizing that economic security and well-being were essential to peace. For, in determining the breadth of their territorial sea and their fishery limits, States, particularly those whose economies were in process of development, were primarily guided by the need to safeguard the right of their peoples to live decently by drawing upon available natural resources for their economic development and the improvement of living conditions.

[6] *Official Records of the United Nations Conference on the Law of the Sea*, vol. II, annexes, document A/CONF.13/L.29.

[7] *Ibid.*, vol. III, annexes, document A/CONF.13/C.1/L.77/Rev.3.

16. The sea played an essential part in the economy of Panama, a country with an extensive coastline on the Atlantic and Pacific oceans: the canal which linked those two oceans crossed its territory; and in addition to that, Panama could hope to depend increasingly on the exploitation of the living resources of the sea.

17. With regard to the regulation of fisheries, his delegation considered that, on all important points, the Convention on Fishing and Conservation of the Living Resources of the High Seas adopted at the first Conference dealt adequately with the problem of conservation of fish stock or stocks of interest to the coastal State and with that of ensuring the optimum sustainable yield from those stocks. The Convention clearly recognized the special interest of the coastal State, which had already been acknowledged by the International Technical Conference on the Conservation of the Living Resources of the Sea held at Rome in April and May 1955. That Convention also contained provisions governing the settlement of disputes arising in connexion with the regulation of fisheries under its terms.

18. With regard to the breadth of the territorial sea, his delegation felt that the Conference should be guided by economic, social and public health considerations, which were of a universal nature, rather than by the narrow dictates of security or defence. The decision of many States to broaden their territorial sea had been dictated by the need to protect interests connected with economic development and with the needs created by a general growth in population.

19. His delegation did not believe that the Conference would adopt a rigid formula for fixing the breadth of the territorial sea, still less accept the outmoded three-mile formula as a rule of international law. Every State, by virtue of its sovereignty, was entitled to fix the breadth of its territorial sea in accordance with its needs. There was no reason why any State should renounce that intrinsic sovereign right other than by acceding to a universally accepted and binding multilateral instrument regulating the matter.

20. The three-mile rule had never been accepted in any general multilateral international instrument; it had been honoured only by virtue of international custom. It was in the nature of customary rules of law that they should give way to new rules as the causes or grounds in which they were rooted changed. And the validity of the three-mile rule had lapsed with the passing of the political, economic, military and other circumstances which might initially have commended it.

21. The passing of the three-mile rule did not, of course, mean that States had henceforth the unilateral right to extend their territorial sea arbitrarily, or beyond reasonable limits. Although state practice was not uniform in the matter, international law did not authorize the extension of the territorial sea beyond a permissible maximum breadth of twelve nautical miles. The position in international law had been admirably stated by the International Law Commission in article 3, paragraph 2, of its draft articles concerning the law of the sea:

> " The Commission considers that international law does not permit an extension of the territorial sea beyond twelve miles."

22. Thus the Commission had clearly laid down the principle that international law permitted extension of the territorial sea up to a maximum breadth of twelve miles. It was significant that, while thus recognizing the twelve-mile permissible maximum breadth as a rule of international law, the Commission had simply taken note in the following paragraph of the same article of the fact that certain countries did not recognize a breadth of the territorial sea greater than three miles, without in any way endorsing that claim:

> " The Commission, without taking any decision as to the breadth of the territorial sea up to that limit [twelve miles], notes, on the one hand, that many States have fixed a breadth greater than three miles and, on the other hand, that many States do not recognize such a breadth when that of their own territorial sea is less."

23. There was another decisive argument in favour of such an interpretation of article 3, paragraph 2. The International Law Commission, in paragraph 4 of its commentary on article 7 (Bays), had made the following statement relating to the closing line of a bay:

> " 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." [8]

Since the distance of twenty-five miles was described as only " slightly more than twice the permissible maximum breadth of the territorial sea ", there could be no doubt that the permissible maximum breadth laid down in article 3, paragraph 2, was twelve miles.

24. His delegation therefore considered that in enacting legislation to fix the breadth of the territorial sea at twelve miles the legislature of Panama had adopted a reasonable outer limit for that sea: one that conformed with international law and in no way ran counter to international practice. As the International Law Commission itself had pointed out, that practice had never been uniform, and different countries had variously fixed the breadth of their territorial sea at three, four, five, six, nine, ten, twelve and even two hundred miles. He had dwelt on international practice, because Panama had always been careful scrupulously to observe its international commitments, a line of conduct that entitled it to insist upon the observance of those international agreements to which it was party.

25. He hoped that the Conference would achieve its objectives and thereby help to maintain the rule of law in relations between States, great and small, thereby in turn making possible peaceful coexistence in an atmosphere of understanding of common problems.

26. Mr. RADOUILSKY (Bulgaria), noting that conditions augured well for the success of the Conference, appealed for good will and mutual understanding. The work of the first United Nations Conference on the Law of the Sea should be brought to its proper end by the conclusion of an agreement on the two interconnected

[8] *Official Records of the General Assembly, Eleventh Session, Supplement No. 9*, p. 16.

problems of the breadth of the territorial sea and fishing limits. Though the arguments adduced in favour of the various alternatives were already well known, the issues were admittedly complex because they involved vital national interests. Moreover, there was no preliminary draft before the present Conference to provide a basis for discussion. Hence there was great scope for negotiation in a spirit of peaceful coexistence.

27. His Government held that any coastal State was entitled to determine the breadth of its territorial sea within the limits of three to twelve miles, and had enacted legislation establishing the latter figure, which best suited its requirements, as it did those of newly emergent States which had only recently begun to establish their maritime rights.

28. Originally, the legal régime of the territorial sea had been determined by defence requirements. Clearly, with modern technical advances, a wider belt had become necessary, and was best provided by the twelve-mile limit allowed by international law. The need was the greater for those countries which did not have a powerful navy to defend their coasts. As Mr. Verdross had argued in his work on international law, each State was entitled to claim that breadth over which it could exercise effective and continuous sovereignty from land. But he had added that no State was entitled to encroach upon the established rights of others, and therefore was not free arbitrarily to extend its territorial sea.[9] In connexion with that last contention, it should be pointed out that the International Law Commission had expressed the opinion in the commentary on article 3 of its draft articles on the law of the sea that extension of the territorial sea up to an outward limit of twelve miles did not infringe the principle of the freedom of the seas. Accordingly, provided it could exercise effective sovereignty, a coastal State could fix the breadth of its territorial sea at any distance up to twelve miles.

29. Important interests of the coastal State, such as those relating to customs and public health regulations, civil and criminal jurisdiction and the conservation of the living resources of the sea, had to be safeguarded. Some States felt that that could best be done through a uniform régime under which the coastal State would have full sovereignty over the whole belt formed by the territorial sea and contiguous zones, whereas others advocated special zones for safeguarding special interests.

30. The argument that a territorial sea twelve miles broad would restrict freedom of navigation on the high seas was unconvincing, because all States recognized that merchant ships had the right of innocent passage through their territorial sea. Moreover, it in no way followed that the interests of States and of international shipping would in any way be affected by the universal adoption of such a breadth. Another argument adduced against the twelve-mile limit was that it would give rise to difficulty in delimiting the territorial sea of two States whose coasts were opposite each other, when the distance between them was less than twenty-four miles. That objection was equally groundless, because those cases usually pertained to straits, which were normally subject to regulation by specific international agreement. In other cases, difficulties could always be settled by negotiation between the interested parties. In any event, the objection was equally applicable to a six-mile limit in cases where the sea between the shores of the two States was less than twelve miles wide.

31. A twelve-mile limit allowed the coastal State effectively to protect the living resources of the sea off its shores, a particularly important consideration when its coasts were heavily populated and fish products formed a staple element of their diet.

32. It had been argued at the first Conference that endorsement of the twelve-mile limit would lead States to claim even greater breadths, and consequently cause friction and conflict. That allegation was quite unfounded, and, again, a similar objection could be levelled against a six-mile limit. It was perfectly obvious that agreement on a maximum limit would put an end to future claims for a broader territorial sea.

33. There was equally little substance in the objection that a twelve-mile limit would involve coastal States in heavier control expenditure. Though that might be true for some countries it was not so for all, and in any event the scale and nature of its control operations was a matter for each Government.

34. Such were the principle objections that had been raised to one of the most important proposals before the Conference: that submitted by the Soviet Union delegation (A/CONF.19/C.1/L.1).

35. Analysing the case for a six-mile territorial sea plus a six-mile fishing zone, and leaving aside the question of safeguarding so-called historic fishing rights, he said that, like the proposal for a twelve-mile limit, it recognized the exclusive economic interests of the coastal State within a twelve-mile belt. The main difference between the two lay in the fact that the former would allow the coastal State to exclude foreign fishing vessels from its fishing zone but not to protest against the presence of warships therein, which might constitute a serious threat to the coastal State's security.

36. The proposal for a six-mile limit had been submitted in the guise of a concession, whereas in reality it conferred certain advantages on States already possessing powerful navies and capable of exploiting the existing situation for their own ends. It was perfectly clear that such States would be in a far better position to launch offensive operations against a coastal State with a six-mile than with a twelve-mile territorial sea. In other words, the advocates of a six-mile territorial sea plus a six-mile fishing zone were first and foremost inspired by military, not by economic, considerations.

37. It would appear that defence was the main consideration; those countries which attached special importance to their security therefore had good reason to prefer a twelve-mile limit for the territorial sea. The Bulgarian delegation considered that the Soviet Union proposal provided the best solution for both problems before the Conference, and that it would meet the specific needs of different countries by providing various alternatives. Furthermore, it did not seek to impose any decision on a State that might redound to its disadvantage, but, within the framework of international law, left a free choice to each, consistent with the interests of the international community as a whole. The proposal had as

[9] Alfred Verdross, *Völkerrecht* (Vienna, Springer-Verlag, 1959), p. 215.

its objective the reinforcement of peace and international co-operation.

38. It was common knowledge that the efforts of The Hague Codification Conference of 1930 to establish a uniform three-mile limit for all States in the face of divergent legislation and practice had failed: the failure had been primarily due to the impossibility of fixing a uniform breadth for the territorial sea without injuring the vital interests of many States. That fact had again been confirmed at the first United Nations Conference on the Law of the Sea. Accordingly, the Bulgarian delegation was disposed to favour a realistic solution which, so far as possible, accorded with the interests of all States rather than an attempt to establish a uniform limit. He was certain that success would follow if all delegations were prepared to co-operate.

The meeting rose at 12.15 p.m.

FIFTH MEETING

Friday, 25 March 1960, at 10.45 a.m.

Chairman: Mr. José A. CORREA (Ecuador)

Consideration of the questions of the breadth of the territorial sea and fishery limits in accordance with resolution 1307 (XIII) adopted by the General Assembly on 10 December 1958 *(continued)*

GENERAL DEBATE *(continued)*

Statements by Mr. Drew (Canada), Mr. Tolentino (Philippines), Mr. García de Llera (Spain) and Mr. Geamanu (Romania)

1. Mr. DREW (Canada) said that the present Conference was faced with a great challenge, because for the first time in history a comprehensive codification of the law of the sea was in sight. Perhaps it was not fully appreciated how much progress had been made and what substantial results achieved at the first United Nations Conference on the Law of the Sea, which had been one of the most fruitful international gatherings ever held, as was proved by the scope and importance of the instruments it had adopted. Established law had been defined and codified there and new law written: an outstanding example of conciliation in the interests of the progressive development of international law.

2. The issues arising from the two questions before the second Conference had been clearly defined; but they were complex and of the utmost importance. He was certain that the differences of opinion surrounding them could be reconciled if the spirit of co-operation prevailed.

3. There were only two definite suggestions before the Conference about the delimitation of the territorial sea: one whereby any coastal State might fix the limit at any distance not exceeding six miles from the applicable baseline, the other whereby it might fix the limit at any distance between three and twelve miles.

4. With regard to fishing zones, there now appeared to be overwhelming agreement that every coastal State should have a right to establish such a zone contiguous to its territorial sea and up to a maximum distance from the baseline of not more than twelve nautical miles. The proposal for such a zone had first been put forward by the Canadian delegation at the 1958 Conference [1] to meet the needs of States that wished to have a measure of control over fishing off their coasts without being driven to adopt a twelve-mile territorial sea, an extension which his delegation still regarded as contrary to the fundamental principle of the freedom of the seas.

5. It was most satisfactory that that new legal concept of a distinct fishing zone — not provided for in the International Law Commission's draft article on the subject — should have found general acceptance, and that it should figure among all the proposals so far submitted to the present Conference. The concept offered an effective alternative to the action taken by those States which had adopted a twelve-mile territorial sea solely for the purpose of exercising greater control over fishing. With the rapid growth of world population and rising food requirements, the conservation and protection of the living resources of the sea were daily increasing in importance. Large trawlers fitted with modern refrigerating equipment could now operate far from their home ports and remain at sea for long periods — a development that called for new measures to protect the interests of those fishermen who depended for their livelihood on what they could catch off their own coasts. He hoped that all delegations, whether representing countries which relied in large measure on distant fishing countries whose waters were fished by boats from other nations or landlocked countries, would carefully examine the relevant estimates of the true extent of adjustment that the adoption of a twelve-mile exclusive fishing zone would necessitate. He mentioned that point because there had been a tendency to exaggerate the readjustment that would be necessary if steps were taken to protect the livelihood of fishermen living on coasts adjacent to waters fished by other nationals.

6. Introducing his delegation's proposal (A/CONF.19/C.1/L.4), he said that it offered a simple formula designed to meet the general desire for a wider fishing zone over which the coastal State would have full control. Though it might not altogether satisfy States whose nationals engaged intensively in distant fishing, there was considerable evidence to support the contention that such a formula was the only effective alternative to extension of the territorial sea for purposes of fisheries protection.

7. Up to a point, the Canadian proposal was identical with that of the United States of America (A/CONF.19/C.1/L.3); but there was an important difference between them in that the latter sought to establish what had been described as " historic " fishing rights. Though in some respects those rights would not be as extensive as originally contemplated in the United States proposal of 1958,[2] the underlying idea was the same. A provision

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[1] *Official Records of the United Nations Conference on the Law of the Sea*, vol. III, annexes, document A/CONF.13/C.1/L.77/Rev.3.

[2] *Ibid.*, vol. II, annexes, document A/CONF.13/L.29.

of that kind would benefit, perhaps, some fifteen countries. That difference apart, supporters of either of the proposals were presumably at one in favouring a maximum limit of six miles for the territorial sea with a further contiguous fishing zone up to a maximum of twelve miles from the baseline.

8. His delegation considered that if that last solution were accepted, the rights conferred should be available to all States without restriction, and that it would be inconsistent with the doctrine of equality under the law affirmed in the Charter of the United Nations to create a special exception in perpetuity for the benefit of relatively few countries. While sympathizing with the concern felt about possible losses that strict application of such a rule might cause, he believed that the consequences might prove to be less serious than was feared in some circles. Other States faced with a similar situation had discovered new fishing grounds, adapted their methods to the changed circumstances and greatly increased their catch.

9. An important objection to making allowance for " historic " rights was that to do so would discriminate against newly emergent States and those countries which did not yet possess the economic resources needed for building up long-distance fishing fleets.

10. Recognition of " historic " fishing rights would also be inequitable because it would penalize countries which had sought to establish a rule of law through international agreement under United Nations auspices, and which had accordingly refrained during the past few years from taking unilateral action to extend their territorial sea beyond three miles. The effect of giving such a proposal the sanction of law would be not to reconcile conflicting interests, but to confer special privileges as a rule of law. Conditions varied widely from country to country, from coast to coast and from year to year, and no one formula governing an exception of that kind could be made universally applicable.

11. Without wishing to minimize the problems that might arise when adjustments had to be made following on the general adoption of a twelve-mile fishing zone, he was convinced that they could best be dealt with by means of supplementary bilateral or multilateral agreements rather than by an attempt to draft a rule of international law that would cover within a single framework all possible contingencies and changes. As examples of the kind of agreement he had in mind, he mentioned the Agreement on Fisheries between the Soviet Union and the United Kingdom of 1956 and the agreement recently concluded between the United Kingdom and Denmark regulating the fisheries in the ocean surrounding the Faroe Islands.

12. The International Convention for the High Seas Fisheries of the North Pacific Ocean concluded between Canada, Japan and the United States of America in 1952 provided an illustration of the way in which agreements on fisheries had to vary in application from time to time and from place to place, and showed how difficult it would be to legislate for all situations in a single comprehensive provision. Although it had been argued that it certain cases it had proved difficult to reach such agreements, it was surely not a vain hope that, if a satisfactory solution were found to the problem of the breadth of the territorial sea and the fishing zone, conditions would be rendered more conducive to the settlement of certain outstanding problems. Indeed, it was common knowledge that some countries had postponed bilateral negotiations until they saw the outcome of the present Conference.

13. Turning to the question of the breadth of the territorial sea, which was of the utmost importance to all States since it was liable to create international friction, he said that it was in the general interest to preserve the widest possible area for unrestricted passage by air or sea. It must be remembered that freedom of air navigation was governed by the breadth of the territorial sea and that the ordinary rules of innocent passage for surface ships did not apply to aircraft. The history of the freedom of the seas had been bound up with the growth of freedom in other spheres, and extension of the territorial sea beyond the necessary limits was a retrograde step. The Canadian proposal put forward in 1958 had at first stipulated a three-mile territorial sea.[3] However, when a number of the largest maritime and fishing countries, previously firm supporters of the three-mile rule, had accepted a breadth of six miles, his delegation had recognized that the latter figure was the minimum capable of commanding general support, and had accordingly amended its original proposal in that sense.

14. No convincing argument had yet been adduced to prove that a wider belt was necessary for defence, and he was unable to endorse the view that an extension to twelve miles would assist the coastal State. On the contrary, the Canadian Government held that from the security angle the area over which supervision must be exercised should be as narrow as possible — a circumstance which, moreover, would be consistent with the principle of the freedom of the seas. A wider territorial sea would add immensely to the obligations and responsibilities of coastal States: a burden which, for its part, his Government had no desire to assume. It hoped that for the same reasons other coastal States would favour the narrowest possible territorial sea and that agreement would be reached on a six-mile limit. If some regard were to be paid to the opinion of those with most experience in the problems of navigation at sea and in the air, it seemed impossible to ignore the fact that more than three-quarters of all the peaceful sea traffic of the world was maintained by nations which at the first Conference United Nations on the Law of the Sea had contended that a narrow territorial sea was in the best interests of trade over the world's sea routes. An even greater percentage of total airborne traffic was carried by the same countries, which had pointed out that a wider territorial sea would lead to a general increase in shipping and air transport costs.

15. He did not propose to quote legal opinions expounded at a time when custom and usage had established discernible rules about the territorial sea. The General Assembly expected the Conference to say what the law should be for the future. He hoped that the Canadian proposal, which had been formulated as simply as possible, would prove acceptable as the most reasonable compromise. Probably no general formula could be

[3] *Official Records of the United Nations Conference on the Law of the Sea*, vol. III, annexes, document A/CONF.13/C.1/L.77/Rev.1.

found that would entirely satisfy every delegation, but with good will it should be possible to find common ground in spite of differences of view. A successful outcome would not only provide the first complete legal code of the law of the sea, it would also help to bring nations closer together.

16. Mr. TOLENTINO (Philippines), although fully aware that the first United Nations Conference on the Law of the Sea had on the whole achieved a remarkable success given the limited time at its disposal, expressed regret that it had been unable to solve the major problem of the breadth of the territorial sea. It seemed illogical that the Convention on the Territorial Sea and the Contiguous Zone should recognize the sovereignty of the coastal State over the territorial sea, and provide for the right of innocent passage of foreign merchant vessels through that sea, without delimiting its breadth. Failure to establish a generally accepted limit for the territorial sea would certainly jeopardize international harmony; indeed, disputes had already arisen between certain States in the matter.

17. International law flowed either from the general practice of States or from conventions and treaties, but there was at present no rule of international law establishing the breadth of the territorial sea. Although, in the remoter past, three nautical miles had been generally accepted as the customary breadth of the territorial sea, in practice that figure had long been discarded by many States, only about twenty out of more than seventy coastal States having still maintained it at the time of the first Conference. Moreover, no proposal had been submitted to that Conference advocating the adoption of a three-mile limit. And in the meantime many States had proclaimed the extent of sea over which they claimed sovereignty and jurisdiction. It was now for the second Conference to devise a new rule that would settle the matter for the future.

18. The breadth of a coastal State's territorial sea was inseparably linked with the question of its self-preservation and survival, and did not lend itself to the application of abstract legal principles, because political and economic considerations were the predominant factors determining the extent of territorial sea over which a State wished to assert its sovereignty and jurisdiction. As the circumstances and needs of coastal States varied greatly, it was inevitable that they should claim different breadths of territorial sea, and any rule for fixing the breadth of the territorial sea that failed to take account of those circumstances, or to recognize and respect established rights based on historic title, treaty rights or actual occupation, would be neither generally acceptable nor just. Any proposal that sought to reduce or limit the extent of territorial waters over which such States already exercised sovereignty would entail an infringement of their territorial integrity, since they regarded that extent of sea as essential to their national existence. The validity of those rights could not be affected by the mere fact that the limit already laid down by those States might exceed any maximum breadth of territorial sea the present Conference might agree upon. From the basic legal principle that acquired or vested rights could not be impaired by subsequent legislation, it followed that existing territorial seas which exceeded the limit established by the present Conference would perforce constitute exceptions to the rule. Even the fact that they extended beyond the twelve miles which, in the opinion of the International Law Commission, was the maximum limit of the territorial sea permissible under international law should not prevent their recognition as exceptions.

19. In any event, the limits mentioned by the Commission in its draft articles on the territorial sea were not binding on the present Conference, as was shown by the fact that, although the Commission had specified a maximum distance of fifteen miles off-shore for the closing line across the mouth of a bay, the first Conference had increased that distance to twenty-four miles in the Convention on the Territorial Sea and the Contiguous Zone which it had adopted.[4] Moreover, the Commission itself had recommended that exceptions be recognized where necessary to protect established rights. From the purely practical standpoint, therefore, he would urge the Conference to facilitate agreement by recognizing accomplished facts and making provision for exceptions, of the kind he had described, to any rule it might adopt, since States would not readily renounce rights they already enjoyed. The United States of America was itself proposing to recognize and preserve the historic fishing rights of foreign States as an exception to the exclusive fishing rights of a coastal State in its contiguous fishing zone. It was of course understood that only existing or established rights would be respected as exceptions to the rule fixing the breadth of the territorial sea, and that no future extensions to existing limits would be permitted in those cases.

20. The Philippines would be one of the exceptional cases he had referred to, inasmuch as it had established rights over sea areas that in some places would involve much more than the twelve miles recognized by the International Law Commission as the maximum permissible breadth of territorial sea. But the exercise of sovereignty and jurisdiction by the Republic of the Philippines over such areas was not the outcome of a mere unilateral act of his Government, but a treaty practice of very long standing. The Philippine Archipelago was a compact group of more than 7,000 small islands, linked by a common submarine platform, and had from time immemorial been considered as a single territorial unit. After three centuries as a Spanish colony, the archipelago had been ceded to the United States of America under the Treaty of Paris of 10 December 1898, article III of which had described the territory as the " Philippine Islands ", laying down its boundaries in terms of latitude and longitude. Through the agency of the Government of the Philippine Islands, the United States of America had subsequently exercised sovereignty and jurisdiction over all land and all sea within those boundaries. The same boundaries had been reaffirmed in the Convention regarding the Boundary between the Philippine Archipelago and the State of North Borneo, concluded between the United States of America and the United Kingdom on 2 January 1930. On attaining its independence on 4 July 1946, the Republic of the Philippines had assumed full sovereignty and jurisdiction over the same territory as provided for in his country's Constitution, which had been approved and

[4] *Ibid.*, vol. II, annexes, document A/CONF.13/L.52, article 7.

signed by the President of the United States and ratified by the Philippine people through a plebiscite. At no time during the period that had elapsed since the conclusion of the Treaty of Paris had any State protested against the exercise of sovereignty, either by the United States of America or subsequently by the Republic of the Philippines, over all the land and all the sea described in article III of that Treaty. Countless generations of Filipinos had derived a large part of their food supply from the waters between and around the islands making up the archipelago, and all those waters, irrespective of their width or extent, had always been regarded as part of the inland waters of the Philippines. Thus, his country's claim to a territorial sea extending to the limits set forth in the treaty of Paris was based on a historic right and adequately supported by geographical and economic considerations. The case of the Philippines would remain *sui generis*, and he hoped that the Conference would give sympathetic consideration to the inclusion in any rule it might adopt on the breadth of the territorial sea of a clause expressly recognizing existing established rights, including those of his country.

21. He recalled that an attempt had been made at the first United Nations Conference on the Law of the Sea to formulate a special rule on the régime of archipelagos,[5] at the instance of the International Law Commission, which had clearly stated in the commentary to its draft article 10 on the law of the sea that the provisions dealing with the manner of measuring the territorial sea of separate islands were not applicable to the territorial sea of archipelagos. But there was no existing rule of international law on the matter, and if one were promulgated by international convention it must not be allowed adversely to affect archipelagos in which the extent of territorial waters was sanctified by history and by treaty agreements. In view of its unique position, the Philippines had no direct interest in the breadth of the territorial sea the present Conference might finally agree upon; but in the interests of peace and international harmony it would co-operate in all efforts to formulate a generally acceptable rule on the subject, consistent with its own position. Nevertheless, he was obliged to stress yet again that his country would be unable to support any proposal susceptible of being interpreted in such a way as would permit the infringement of any of its historic rights or enable foreign vessels and fishermen to penetrate with impunity into the heart of the Philippine Archipelago.

22. Mr. GARCIA DE LLERA (Spain) recalled that the doctrine of the freedom of the seas had first been formulated in the sixteenth century by Vitoria and other Spanish jurists at the time when Spain had been one of the great maritime powers of the world.

23. The Conference should be moved by a spirit of co-operation and understanding in broaching the questions before it, which involved new problems — problems unknown at the time when there were generally accepted rules deriving from largely concurrent though unilateral legal action taken by various States in the matter. There could be no doubt that unilateral action by States could give rise to rules of customary international law, and in the case of the breadth of the territorial sea, state practice had seemed ripe for codification. But a unilateral decision which changed the extent of a State's jurisdiction affected the established rights and vested interests of other States, and therefore, in accordance with the universally accepted rules of international law, could validly take effect only if explicitly or implicitly recognized by the States affected.

24. Although the task facing the Conference was not that of codifying existing rules, but rather that of formulating new ones, it was essential not to lose sight of the difference between the explicit or implicit legal recognition by a State of a given situation, such as the unilateral extension by another of its jurisdiction, and the validity of that situation *erga omnes* regardless of the will of the States affected by it.

25. International practice in the matter of the breadth of the territorial sea and special sea areas showed that those questions had not been solved in explicit terms by international law. Accordingly, the Conference was called upon to lay down new rules in the matter, and the Spanish delegation, for its part, wished it every success in its task.

26. For several decades the claims of States concerning jurisdiction beyond their territorial sea had been increasing in scope. The purposes of those claims, which had not always won general recognition, had been that of safeguarding the coastal State's security, customs and conservation interests, and that of excluding foreign fishermen from certain areas, or reserving the resources of the soil and sub-soil of the continental shelf to the nationals of the coastal State.

27. In a recent book,[6] an eminent Dutch jurist had pointed out that there was great diversity in state practice regarding the powers exercised in the sea areas in question. It was perhaps in the matter of fisheries that the situation was most confused, affected as it was by the concepts of the territorial sea, of a contiguous exclusive fishing zone and of a contiguous zone for the conservation of the living resources of the sea. He drew attention in that connexion to the opinion of the late Professor Gidel that, under positive international law, fishing interests did not constitute valid grounds for establishing a contiguous fisheries zone by unilateral declaration on the part of a coastal State, and that only by virtue of an international agreement could unilateral measures taken by a State beyond its territorial sea be made binding on other States.[7] The Spanish delegation therefore considered that a general agreement alone could make possible a solution of the problem of fishery limits with due regard for all the interests involved.

28. With regard to the breadth of the territorial sea, in the absence of uniform state practice in the matter, the Conference was called upon to formulate a new rule, and the Spanish delegation considered that the breadth laid down by that new rule should be uniform for all States; the formulation of such a uniform rule alone could solve the difficulties, and facilitate settlement of the disputes, to which the existing situation had given rise.

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[5] *Ibid.*, vol. III, 52nd, meeting, paras 23-41.

[6] H. Ph. Visser 't Hooft, *Les Nations Unies et la conservation des ressources de la mer* (The Hague, Martinus Nijhoff, 1958), pp. 93 ff.

[7] Gilbert Gidel, " La mer territoriale et la zone contiguë ", *Recueil des Cours de l'Académie de Droit International*, 1934, II, p. 268.

29. It was patent that very few States were opposed to a breadth of six miles for the territorial sea. It was equally clear that a breadth of twelve miles could not command general acceptance. The Spanish delegation supported the six-mile rule, a rule which had been a part of Spanish municipal law for two centuries past. As long ago as 1760 and 1775, a distance of two leagues from the coast had been laid down by Royal Ordinance as the limit of Spanish jurisdiction for customs purposes. The Royal Decree of 3 May 1830 mentioned a breadth of six miles, which had been reiterated in 1852; in 1864, in an enactment relating to customs, a distance of six miles had been specified as the equivalent of two leagues. In 1870, legislative provisions had further clarified the position by laying down that the breadth of six nautical miles of territorial sea corresponded to 11,111 metres. Lastly, an Order of 5 October 1874 had confirmed that the breadth of Spain's territorial sea was six nautical miles, a distance that had been proclaimed yet again in the regulations issued on 13 October 1913 in pursuance of the Maritime Navigation Act of 1909.

30. That breadth of six miles, in addition to being of long standing in Spanish legislation, conformed with the tradition of the Mediterranean countries. It was true that the six-mile rule was viewed with some misgivings by certain coastal States in the vicinity of whose coasts nationals of other States engaged in fishing. In that respect, there could be no doubt that international law was in process of development. Many bilateral and multilateral international agreements had been signed in recent years with the object of regulating fisheries in certain sea areas, and those agreements left no doubt about the legitimate character of fishing activities conducted by the nationals of the non-coastal States.

31. The Spanish delegation considered that the provisions of the Convention on Fishing and Conservation of the Living Resources of the High Seas, adopted by the first Conference in 1958, adequately protected the interests of coastal States, and that the fears of those States would to a very large extent be dispelled if that Convention entered into force. The present Conference should therefore refrain from creating conditions likely to make it more difficult for certain States to ahdere to the 1958 Convention. His delegation did not believe that any State wished arbitrarily to exclude foreign fishermen from their traditional fishing grounds. On the other hand, it was in the interests of all States to protect the living resources of the sea from over-fishing and depletion. That question was particularly important to a country such as Spain, which held ninth place among the fishing nations of the world in respect of total catch.

32. The Spanish delegation considered that recognition of the coastal State's special interest in the seas adjacent to its coast should not be granted at the cost of the indiscriminate sacrifice of legitimate interests which were entitled to protection under international law: the interests of those States the nationals of which had been fishing for centuries in seas far from their own shores and had, through their efforts, discovered and developed new sources of wealth for the benefit of all mankind. It would therefore oppose any measure entailing sacrifice of the general interest that might cause a decrease in the food resources of the peoples of the world, including the Spanish people, who had to seek their daily food in distant seas.

33. Mr. GEAMANU (Romania) said that it was a pity that, although the first Conference had succeeded in codifying a large part of the law of the sea, it had been unable to reach agreement on the breadth of the territorial sea or on fishing limits. It was to be hoped that the second Conference would find a solution to those problems, for the better development of international maritime relations and the improvement of the political atmosphere generally.

34. The lack of success that had attended previous attempts, both at the Codification Conference held at The Hague in 1930 and at the first United Nations Conference on the Law of the Sea in 1958, did not mean that no generally acceptable solution could be found that would take due account of all the legitimate requirements and interests at stake. There were no outstanding international problems that could not be equitably solved through negotiation. Although in 1930 a handful of maritime Powers had attempted to enforce the alleged three-mile rule, it was pertinent to recall that in more recent times many States had come out in favour of a breadth for the territorial sea of more than three miles, and that agreement could be reached on the recognition of the right of any State to extend the breadth of its territorial sea up to twelve miles. Moreover, the easier international atmosphere that seemed to prevail at the present time should be propitious to a successful outcome of the Conference's deliberations.

35. The Romanian delegation considered that the law of the sea should bring nations together rather than create international tension. Seen against that background, it was quite evident that there was no conflict between the interests of coastal and those of non-coastal States. It was, indeed, in the common interest that the problem of the breadth of the territorial sea should be settled equitably. The Conference would succeed in doing so if it based its work on two great principles of modern international law: that of the equality of sovereign States and that of peaceful co-operation. One of the implications of the equality of sovereign States was equality in the matter of the right to international security. The very essence of an attempt to give practical expression to international co-operation by the establishment of a rule governing the breadth of the territorial sea and fishing limits would be perverted if accompanied by a further attempt to impose any impairment of the interests of coastal States in respect of security. The Romanian delegation was ready to lend its support to any proposal that was truly realistic. It would consider as lacking in realism any attempt to compel a State to abdicate any part of its territorial sea that was an integral part of its sovereign domain. Romania had fixed the breadth of its territorial sea at twelve miles in the light of the imperative requirements of its economic and military security. The government of a coastal State was the sole judge of that State's interests.

36. Certain States had seen fit to fix the breadth of their territorial sea at three miles, whereas others had fixed it at four, six, nine, ten or twelve miles — sometimes even more; but the great majority of maritime States had decided on a distance of up to twelve miles. By so doing they had infringed no rule of international law and

had made every provision for the need to avoid obstructing international maritime communications and the exercise of rights deriving from the principle of the freedom of the high seas. Any legal formula intended to reflect the facts of international life would have to sanction the present position that States had in general decided on a breadth of up to twelve miles for the territorial sea.

37. The arguments advanced by the Canadian, Spanish and United States delegations, that to fix the breadth of the territorial sea at twelve miles would be incompatible with the freedom of the high seas and would furthermore be out of date in an age of nuclear armaments, were not defensible. There was no threat to the freedom of navigation in the application of the twelve-mile limit, since merchant ships enjoyed the right of innocent passage through territorial waters; on the other hand the situation with regard to the passage of warships was governed by the security of the coastal State. In that connexion Mr. Geamanu quoted a statement made on 20 January 1960 before the United States Senate Foreign Relations Committee by the head of the United States delegation to the present Conference, endorsing the following words of an American admiral:

> " Naval forces are more important in the missile age than ever before. Mobility is a primary capability of navies. Support of our free world allies depends upon the ability of the Navy to move, unhampered, to wherever it is needed to support American foreign policy."

It was obviously in the interest of the maintenance and reinforcement of peace and international security that naval forces should not be able to approach too close to the coast in order to bring pressure to bear on other countries.

38. Conscious as it was of the important contribution that the Conference could make to the improvement of international relations, the Romanian delegation was resolved to take part in its work in a spirit of constructive co-operation.

Organization of work

39. Mr. MATINE-DAFTARY (Iran), speaking on a point of order, urged that the general debate be concluded as quickly as possible. The time of the Conference was limited, and the Committee should turn as soon as possible to detailed consideration of the questions referred to it.

40. The PRESIDENT shared the view of the Iranian representative that, if the general debate continued in a somewhat abstract vein, there would be a real danger that the Committee would find itself left with too little time for dealing with its basic task of concluding an agreement on the recommendation or recommendations to be made to the Conference in plenary.

41. He proposed therefore that, in making their statements in the general debate, the representatives should also deal as specifically as possible with the proposals before the Committee.

The Chairman's proposal was adopted unanimously.

The meeting rose at 1 p.m.

SIXTH MEETING

Tuesday, 29 March 1960, at 10.45 a.m.

Chairman: Mr. José A. CORREA (Ecuador)

Consideration of the questions of the breadth of the territorial sea and fishery limits in accordance with resolution 1307 (XIII) adopted by the General Assembly on 10 December 1958 *(continued)*

GENERAL DEBATE *(continued)*

Statements by Mr. Carmona (Venezuela), Mr. Hare (United Kingdom), U Mya Sein (Burma), Mr. Riphagen (Netherlands), Mr. Emiliani (Colombia) and Mr. Vlachos (Greece)

1. Mr. CARMONA (Venezuela) said that the great strides taken in a comparatively short period towards the codification of the law of the sea showed that the topic was ripe for consolidation in a new and solidly based code of maritime law in keeping with modern needs. Although the principle of respect for the freedom of the high seas and for international navigation, which was in the minds of all, should not be forgotten, the advancement of many countries, the newly achieved independence of a number of States and a broader understanding of the rights and interests of each group of the human community necessitated solutions other than those which States had been advocating until the recent past. The first United Nations Conference on the Law of the Sea, after wrestling with dogmas and political attitudes for almost three months, had succeeded in drafting four Conventions which, except for two questions, covered the entire subject of maritime law.

2. The Venezuelan Government had tried to put those Conventions into effect as soon as possible. The Convention on the Continental Shelf and the Convention on the High Seas had been approved, with the reservations entered at the time of signature, by the Chamber of Deputies and were at an advanced stage of consideration in the Senate. The Chamber of Deputies had approved the Convention on the Territorial Sea and the Contiguous Zone and the Convention on Fishing and Conservation of the Living Resources of the High Seas, which were now before the Senate, and the Senate was awaiting the results of the second Conference before concluding its consideration of those two Conventions. Hence, the destiny of the Conventions depended on the success of the Conference. The statement made at the 1st plenary meeting by the United Nations Legal Counsel showed that several other States were in a similar position.

3. The two questions remaining to be settled were the breadth of the territorial sea and contiguous zone and the fishery limits. The Venezuelan Act on the Territorial Sea, the Continental Shelf, and the Protection of Fishing and Air-space fixed the breadth of Venezuela's territorial sea at twelve nautical miles measured from baselines specified in the Act. In that belt, the State exercised sovereignty over the waters, the land, the subsoil and the resources within it and the superjacent air-space. In cases where the effect of the delimitation would be

to impinge on foreign territorial waters, any dispute was to be settled by agreements or other means recognized in internatinal law. In addition, the Act provided for a contiguous zone of three nautical miles for purposes of supervision to safeguard the security and other national interests of the State. In that zone there existed no sovereignty nor exclusive fishing rights, and the air-space was not included in it. The Act had been carefully prepared by technical commissions in the light of the views of the International Law Commission and of modern science. No difficulties of any kind had yet arisen in its practical application. Neither the Venezuelan National Congress nor the Executive had the slightest intention of changing that principle, since they regarded it as equitable and satisfactory, and since Venezuelan practice was the same as that of many States which professed advanced ideas with regard to the territorial sea.

4. The concept of a three-mile limit was arbitrary and obsolete. It had been conceived in ancient times by the great maritime Powers to allow them full freedom of action on the high seas, even in the vicinity of foreign coasts. Some countries were trying to work out a formula which would salve at least something of the ancient concept, either by extending the territorial sea to six miles, with a contiguous zone of another six miles with exclusive fishery rights, as in the Canadian proposal (A/CONF.19/C.1/L.4), or the similar, but more restricted, formula recognizing historic rights proposed by the United States (A/CONF.19/C.1/L.3). The United States representative had stated that the United States still preferred the three-mile limit and was prepared to accept the compromise formula only because the twelve-mile limit had been so widely adopted; and Canada had passed an Act [1] in 1952 establishing a breadth of twelve miles for customs and fishing, so that it was making no real concession in its proposal.

5. The voting at the first Conference showed that an absolute majority of the participants supported the principle of a territorial sea twelve miles in breadth.The United States proposal [2] had then failed to gain a two-thirds majority; the vote had been 45 in favour and 33 against, with 7 abstentions, whereas the proposal for the twelve-mile limit [3] had received 39 votes in favour and 38 against, with 8 abstentions. The Canadian proposal, which fixed the breadth of the territorial sea at six miles with a contiguous fishing zone of a further six miles,[4] had been overwhelmingly defeated. It was evident, therefore, that the so-called compromise proposal in no way satisfied the majority of States and that a large number of States were not prepared to accept compromises in a matter which they regarded as vital. In his opinion, the twelve-mile limit would inevitably prevail.

6. The objections to the twelve-mile rule were unconvincing. It had been argued that if a flexible formula of three to twelve miles were adopted, all States would in practice opt for the latter figure. In fact, many States did not wish to extend their territorial sea for practical reasons. They would be free to apply or not to apply the rule as they wished. The prevailing uncertainty of the law, and the absence of any fixed rule in customary law, caused much confusion. It was equally untrue that an extension of the territorial sea would be detrimental to the freedom of navigation and to the freedom of the high seas. The adoption of a general rule would in fact facilitate the practical application of the freedom of navigation, and, in addition, the 1958 Conventions guaranteed innocent passage through the territorial sea save in very exceptional cases. The Convention on International Civil Aviation of 1944 safeguarded the right of passage for aircraft other than craft of airlines with regular flights, which were subject to bilateral air conventions or to the condition that permission must be obtained for commercial operations. The rule applied equally to the air-space over land and over the territorial sea.

7. It had also been argued that the extension of the breadth of the territorial sea to twelve miles might endanger national security or common defence in emergencies or in wartime. But surely, if, unfortunately, a third world war should break out, there would be no place for neutrals. In any case, the Conference was concerned with the law of the sea in time of peace only, as the International Law Commission had expressly stated.[5] Considering that States should be free to extend the breadth of their territorial sea to twelve miles, the Venezuelan delegation would support any moderate and equitable proposal to that effect.

8. The other question to be settled concerned one of the most important interests of the State — the question of fisheries. The provisions on fishing and conservation of the living resources of the high seas adopted at the first Conference were of the utmost importance, but many countries believed that the matter had not been entirely settled and wished for broader provisions for the protection of coastal States and of the living resources of the sea far from the coasts. The Venezuelan Government was watching with great interest the studies at present being carried out on that subject and hoped that definite conclusions or proposals would be submitted. His delegation would support any proposal that safeguarded the rights of the coastal State without impairing the freedom of the high seas and the right to exploit their resources.

9. Mr. HARE (United Kingdom) said that the fact that various unilateral claims had been made regarding the breadth of the territorial sea and fishery limits showed the need for the adoption of a definite rule of law on those matters, a rule of law which would be respected by all States. It was because the United Kingdom wished to reach agreement upon such a rule that it had supported the final United States proposal at the first United Nations Conference on the Law of the Sea, in spite of the heavy sacrifices that would have been involved for it. The United Kingdom had been then, and was still, seeking a solution which would satisfy the needs of both coastal States and fishing States.

[1] *Laws and Regulations on the Régime of the Territorial Sea* (United Nations publication, Sales No.: 1957.V.2), p. 95.

[2] *Official Records of the United Nations Conference on the Law of the Sea*, vol. II, annexes, document A/CONF.13/L.29.

[3] *Ibid.*, document A/CONF.13/L.34.

[4] *Ibid.*, vol. III, annexes, document A/CONF.13/C.1/L.77/Rev.3.

[5] *Official Records of the General Assembly, Eleventh Session, Supplement No. 9*, para. 32.

10. The achievements of the 1958 Conference had been very considerable, but no agreement had been reached on two questions — the breadth of the territorial sea and fishery limits. The United Kingdom Government had, therefore, continued to regard the three-mile limit as the only breadth recognized under international law. It could not accept, in the absence of international agreement, that unilateral claims to wider limits had any general validity. In view of certain remarks that had been made, for instance in paragraph 1 (*b*) of the commentary on the Mexican proposal (A/CONF.19/C.1/L.2), he emphasized that the United Kingdom did not share the view that the International Law Commission had recognized that any breadth of the territorial sea not exceeding twelve miles was valid in international law. The representative of the United States had arrived at exactly the same conclusion in his clear and convincing statement at the 4th meeting of the Committee of the Whole. The proposal to hold the second Conference would have been meaningless if international law had already recognized the validity of claims not exceeding twelve miles. The suggestion that the Commission intended to imply that that was the position was a complete misinterpretation of its attitude.

11. The United Kingdom Government had sought to understand the reasons for claims advanced by some other States for wider territorial seas and fishing limits. Some, unmindful of the needs of merchant shipping, professed fears on security grounds. Others were concerned for their food supply or their livelihood from the fisheries close to their coasts.

12. Some States seemed to feel that their national security would be increased if they had wider territorial waters. Naturally, the United Kingdom Government understood their concern, but it was surely based on a misconception. A wide belt of waters around their shores was not, in fact, a suit of armour that would isolate those States from danger. On the contrary, in modern warfare a wide territorial sea gave no added protection from attack, and it was difficult and costly to police and control. It became hard to fix precisely the position of ships at sea. That could only increase the likelihood of incidents and so jeopardize the safety of coastal States.

13. So far as the interests of merchant shipping were concerned, he said there should be two essential aims. First, to reach agreement on a uniform breadth of territorial sea; and second, in determining that breadth, to make sure that it was broad enough to satisfy those who could not bring themselves to accept a three-mile limit, but yet not so broad as seriously to increase the risk of interference with the merchant shipping of the world.

14. It had been said that the proposals of the USSR (A/CONF.19/C.1/L.1) and Mexico (A/CONF.19/C.1/L.2), which would entitle each State to fix the breadth of its territorial sea at any distance up to twelve nautical miles, would be fair to all and harmful to none. That was not so. It was hardly a defence to say that countries would not necessarily claim the maximum; what really mattered was that they could, if they wished, claim as much as twelve miles, and such a discretionary power was bound to cause confusion.

15. The life of a seaman, although fortunately less hard than it used to be, was still a dangerous one. Many customary shipping routes ran along coasts or around headlands, with the object not merely of saving distance or making navigation easier, but of taking advantage of shelter. Seamen must not be exposed to greater danger by being pushed further away from places of shelter and from effective navigational aids. It was argued that those difficulties would not arise because the right of innocent passage had already been recognized. Experience showed, however, that there was a temptation to interfere with merchant shipping and, notwithstanding the right of innocent passage, reasons for interference were not always difficult to find. To avoid such risks, ships might find it necessary to make costly, lengthy and possibly dangerous detours. Such elements of uncertainty and risk, which could flow from an extension of the territorial sea to twelve miles, could not be ignored. Shipping was an expensive business, even under favourable conditions. Nor were the interests of the leading seafaring nations alone involved. Many nations were for the first time establishing their own merchant fleets and others would do so in the future. It would be unwise to make things more difficult for them. Could it not be agreed that the well-being and future development of all countries were dependent on the unfettered movement of world shipping? At a time when efforts were being made to remove artificial trade barriers, to lower tariffs, and to increase the flow of trade, surely it was undesirable to narrow freedom of movement on the high seas.

16. Some countries advanced the requirements of fishery conservation as a reason for claiming wider fishery limits; but that was not a sound argument. One of the achievements of the 1958 Conference had been to resolve the conservation problem by means of the Convention on Fishing and Conservation of the Living Resources of the High Seas, which had been adopted by a two-thirds majority. The merits of that Convention had, rightly, been generally acclaimed. It provided the means by which the fishery resources of the world could be properly conserved, so that the best possible use might be made of them. Recognizing the special interest of the coastal State in conservation, it gave that State the initiative in conserving fishery resources, not only in the vicinity of its coasts, but on the adjacent high seas. Any measures which a coastal State prescribed must conform to the scientific principles of conservation, and must aim at enhancing the yield of the fisheries over the years. The fishermen of all countries were required to observe those measures. There was, therefore, one rule for all and discrimination against none; and with such a balanced, rational and sensible arrangement, considerations of conservation could hardly be put forward as a reason for the extension of fishery limits, since the coastal States themselves would be able to ensure that all conservation needs were met and that the fisheries off their shores were not harmed by others.

17. If, then, conservation was not at issue, what lay behind the arguments about the breadth of fishery limits ? Much of the argument was about the problem of sharing the available catch. That was, of course, a

matter of great economic importance and no doubt accounted for the view, held by some, that every country should be entitled to exclusive fishing rights in a twelve-mile belt, and that foreign fishermen should stay in their own home waters, or at any rate well out to sea. It should be remembered, however, that not simply a question of food, but also the livelihood of fishermen of many nations was involved. Delegations should consider, firstly, why some countries engaged in what might be termed distant-water fishing; secondly, if that fishing were stopped or curtailed, what would be the effect upon the world's fish food supply; and what would be the economic consequences for the fishery and the coastal States.

18. Some countries engaged in distant-water fishing largely because of their geography and natural circumstances. The size of the fish stocks in the various coastal waters was not proportionate to the size of the national populations, not because the fish stocks in some places had been exhausted, but because some parts of the seas were naturally richer in fish than others. In general, fish were most numerous and easiest to catch in the shallower waters nearer to the shore than they were out in the deep waters of the oceans. Some countries, therefore, had to go farther afield than others to catch the fish they needed. The North Sea had been a traditional fishing ground for centuries. More fish were being caught there than ever in the past, but even so not enough to satisfy the needs of the very large population of Europe, and so for a very long time past the fishermen had had to go to more distant parts of the North Atlantic. Distant-water fishing of that kind had nothing to do with imperialism and colonialism. It was a necessity imposed by the facts of geography. It was not only the older nations which were affected or behaved differently from the others; among the newer nations there were those whose fishermen followed their trade nearer to the coasts of other countries than of their own, and their number must not be under-estimated.

19. Obviously, distant-water fishing would be greatly diminished if a twelve-mile fishing limit become the universal rule. Much of that fishing took place within twelve miles because the fish were close to shore. It was often assumed that if a coastal State were to establish a twelve-mile fishery limit, it would automatically take the fish which the fishermen of other countries would no longer be able to catch. The coastal State could, of course, increase its catch if it had a developed fishing industry of its own, and in many cases that was happening, even though the fishermen of other countries continued to fish in its waters. There were, however, other States on whose shores fishing by other countries took place, with rich resources of fish near their coasts but only sparse populations. Indeed, there were even areas with fish near which there was no human population at all. In cases of that sort the fishing resources could not be fully used. The extension of coastal fishery jurisdiction over large additional areas of sea was bound, therefore, to reduce the world's total fish catch, unless provision was made for continued fishing by other countries in those areas. Without such a provision many countries would be deprived of an important part of their food supply and that, surely, could not be reasonable.

20. In general, therefore, the coastal States would not fully gain what the distant-water fishing States would lose, but the Conference should be under no illusion about the exceedingly severe loss to the fishing States. It was a mistake to suppose that the fishing States were all rich and large countries. Many of them were quite small and by no means wealthy. For many of them distant-water fishing provided staple food for their people which could not easily be replaced. The United Kingdom, for example, was not a poor country, yet it had a very large population on a small island and was the largest importer of food in the world. It had, however, been able to supply itself with most of the fish it needed, thanks largely to its distant-water fishermen, who brought home rather more than half the country's total catch of fish. The loss of that fish, or a great part of it, would be a cruel blow to the United Kingdom's economy and food supply; and the impact upon its fishing industry would be a disaster. The same was true of many other nations. Surely it was not right to argue that, merely because those nations were in a minority, the Conference should condone an injustice. That was in effect the argument employed in the statement of the Canadian delegation. It was no answer to say that no injustice would be created on the grounds that it would be easy for States to make bilateral or multilateral agreements. Under the proposals submitted by Canada (A/CONF.19/C.1/L.4), Mexico (A/CONF.19/C.1/L.2) and the Soviet Union (A/CONF.19/C.1/L.1), the coastal State would have an unqualified right under international law to exclusive fishery jurisdiction over a belt of sea twelve miles wide. Any continuance of distant-water fishing by other States within that belt would be entirely subject to the grace and favour of the coastal State.

21. In the United Kingdom, large numbers of fishermen earned their living by distant-water fishing. Their livelihood and that of their families and of the shore workers would suffer by any serious curtailment of distant-water fishing. Similarly, large population groups in many other countries would suffer. The hardship to individuals would be just the same whether they were citizens of great or of small States. It could not be just or right that fishing States should have to face economic consequences of that magnitude.

22. It should not be thought, however, that the United Kingdom was blind to the needs of the coastal States. It believed that justice should be done to the coastal States, and it was ready to accept a new rule concerning fishery limits which would give them and their fishing communities larger areas of what had always been regarded as the high seas. But although the United Kingdom was prepared to agree to a new rule more favourable to the coastal States, it would not be just if the distant-water fishermen of the world were then to be prevented from continuing to seek their livelihood where they had fished for so long. Yet three of the proposals before the Committee would have precisely that effect. By a stroke of the pen — overnight as it were — great numbers of people in different parts of the world would be thrown out of work; industries which, in some cases for centuries past, had been geared to distant-water fishing would be crippled; and large populations would suffer an immediate and drastic reduction in their total fish food supply.

23. The Canadian proposal did indeed provide for a moderate and uniform breadth of the territorial sea, but the proposal of the Soviet Union was as indefinite on the territorial sea as it was definite on the subject of fishery limits. The Mexican proposal had the same defect, and added another by making the extent of fishery limits equally indefinite and allowing them to be extended even beyond twelve miles, as a kind of reward for States which chose, be it noted, a narrow rather than a wide territorial sea.

24. The basic virtue of the United States proposal (A/CONF.19/C.1/L.3), by contrast with the Canadian formula, was that it aimed to reconcile in a fair way the interests of the coastal and the fishery States where those interests conflicted, and provided the means by which just and reasonable agreements could be made to apply the principles in article 3 of the proposal. The United Kingdom delegation would, therefore, support the United States proposal. No one should think that it did not involve a heavy sacrifice on the part of the United Kingdom. It meant abandoning the three-mile territorial sea; it meant accepting not only the exclusive right of the coastal State to fish up to six miles, but also giving the coastal State a further six miles of exclusive fishing, subject only to the proviso that the contiguous zone should be shared — to a limited extent — with other nations which had an acquired right to fish in those waters. In supporting the United States proposal, the United Kingdom and its fishing industry would be accepting a heavy blow. He hoped that, in keeping with the spirit of the Charter of the United Nations, all delegations would be prepared to make concessions for the sake of the common good.

25. U MYA SEIN (Burma) said that the Conference, which was to complete the unfinished work of the 1958 Conference, was concerned with the two specific questions only, though very difficult questions. The atmosphere in which the Conference was being held was more propitious than that which had prevailed in 1958. There were therefore grounds for hope that the desired agreement could be reached, provided that the Conference rose to the necessary heights of statesmanship.

26. Recapitulating the lessons of past conferences on the subject, he said that the failuere of The Hague Conference of 1930 had shown the uselessness of holding extreme unilateral attitudes on many-sided problems, since the spirit of give and take was an essential feature of negotiation. The 1958 Conference had succeeded in settling some subsidiary questions, but had failed to solve the problem of the breadth of the territorial sea. Nevertheless, a definite trend of opinion had been discernible at that Conference, to the effect that the breadth of the territorial sea should be greater than three miles. His delegation hoped that the area of agreement during the second Conference would increase, so that the law of the sea could be codified successfully in all its aspects.

27. The main problem before the Conference was how to reconcile the freedom of the high seas with the freedom of the territorial seas in a manner that was at once objective, realistic, equitable and lasting. A second problem was to establish a proper balance between past and present standards, in order to eliminate or at least reduce the possibility of future international conflict. Basing itself on the experience of the 1958 Conference, his delegation wished to sound a note of caution. Undue emphasis on past tradition was likely to do the Conference more harm than good. Past tradition and law should from time to time yield to the force of new facts and circumstances; tradition and law must be alive and progressive. The task of codification was, at the same time, the task of making progressive law.

28. In any debate on the breadth of the territorial sea, three factors should be borne in mind. First, the physical or geographical nature of coasts varied greatly; secondly, the political, economic, technical, biological and legal aspects of the question varied with the locality; and thirdly, as the International Law Commission had pointed out, international practice in delimiting the territorial sea was not uniform, and international law did not permit an extension of the territorial sea beyond twelve miles. In view of those considerations, his delegation would be prepared to support a provision fixing twelve miles as the maximum breadth of the territorial sea, in the interests of the widest possible agreement. From the procedural point of view, it seemed preferable to examine the question of fishing limits before that of the breadth of the territorial sea.

29. Mr. RIPHAGEN (Netherlands) said that the main task of the Conference was to end the chaotic situation which had prevailed ever since several coastal States had extended their territorial sea beyond the traditional three miles, and had claimed preferential or exclusive fishing rights beyond their territorial sea. Accordingly, in trying to lay down rules for the maximum breadth of the territorial sea and for States' fishing rights, the Conference could not content itself with fishing an arbitrary number of miles which might be adopted by a two-thirds majority; it was essential to consider the interests of the international community and those of individual States, and to decide upon the legal title on which sovereign rights of States could be based.

30. The choice lay between rules governing the principles of territorial sovereignty and those embodying the freedom of the seas. The breadth of the territorial sea could obviously not be fixed unilaterally by a State, since a national proclamation of sovereign rights beyond the traditional limits constituted an encroachment of the freedom of the seas, as the International Court of Justice had stated in its judgement on the Anglo-Norwegian Fisheries Case.[6] The transfer of sea areas from the régime of the high seas to that of national sovereignty could be justified only by compelling reasons.

31. The reasons given for modifying the breadth of the territorial sea could be divided into general arguments, valid for all coastal States, and special reasons, depending upon particular needs of specific coastal States. Both should be weighed against the interests of the international community as a whole and against the interests of other States. It was sometimes argued that the breadth of the territorial sea should be extended to protect the

[6] *I.C.J. Reports 1951*, p. 116.

coastal State's security. That argument seemed weak, for distance had largely lost its protective value; moreover, it could not prevail against the overriding importance of freedom of navigation, which operated not only in the interest of States whose vessels sailed the seas, but also in the interest of all States whose economic life depended on seaborne trade. Furthermore, cases where the coastal States had to exercise limited jurisdiction beyond their territorial seas were fully covered by the provisions concerning rights of control in the contiguous zone in article 24 of the Convention on the Territorial Sea and the Contiguous Zone.

32. The issue concerning the exploitation of the living resources of the sea beyond territorial limits involved a contrast between the unlimited freedom of every State to fish on the high seas and the exclusive rights of the coastal State to fish in its territorial waters. The interests of the world community obviously required the largest possible area where every State could fish freely, and no conflict of interest arose where supplies of fish were sufficient. Restrictions on fishing to secure the optimum sustainable yield were provided for in the Convention on Fishing and Conservation of the Living Resources of the High Seas. Difficulties therefore arose only where there was not enough fish to allow for free and competitive exploitation by everyone. There was obviously no general basis for giving preference to one State or to another, and geographical proximity of fishing grounds could not justify such preference. Accordingly, any rule would have to be influenced by other considerations.

33. The situation, covered by resolution VI adopted by the first Conference,[7] of countries and regions whose people were dependent on fisheries but had the means to fish only near their own coasts, was not a normal one. There were many States whose population was largely dependent on fisheries and whose fishermen were obliged to fish near the coasts of other States, because no fish was to be found near their own coasts. Finally, there were many cases where no conflict existed between the needs of two States, as the existing resources sufficed for both. Accordingly, the exclusive rights of the coastal State to the living resources of the waters adjacent to its territorial sea could not be justified as a general rule, without reference to the needs and means of specific States and without exceptions in favour of the traditional fishing of other States. Furthermore, the general establishment of fishery zones would often result in insufficient exploitation, both for the purpose of satisfying the world's growing demand for food and for that of securing the optimum sustainable yield. The Conventions adopted at the first Conference reflected the dominant position of the coastal State, by recognizing the baseline system and, in respect of the continental shelf, reserving at least some fisheries for the coastal State. The Convention on Fishing and Conservation of the Living Resources of the High Seas also recognized exclusive rights in respect of fisheries conducted by means of equipment embedded in the floor of the sea and gave a privileged position to the coastal State with regard to the establishment of limitations to prevent over-exploitation. On the other hand, the interests of States traditionally fishing beyond their coastal waters were not given any special protection under those Conventions.

34. Despite those facts, some countries wished to extend the rights of the coastal State still further. The USSR, Mexican and Canadian proposals all provided for exclusive fishing zones, and did not even try to strike a balance between the interests involved. Indeed, they failed to take into account the circumstances of any particular situation. The USSR and Mexican proposals had the added disadvantage of permitting an extension of the territorial sea up to twelve miles; such a provision would be open to serious objections from the point of view of international navigation. Furthermore, the Mexican proposal was clearly not inspired by motives of security, for a State could hardly be expected to trade its security interests for a larger fishing zone.

35. The United States proposal at least had the merit of recognizing in principle the equal value of the interests of States with traditional fishing rights and those of States geographically nearer the area in question, and of providing for the obligation to negotiate and for arbitration in the event of the failure of the negotiations. While his delegation still considered that the traditional limits of the territorial sea should stand, and that insufficient reasons had been advanced for any encroachment on the principle of the freedom of the seas, it was aware of the paramount importance of reaching a solution which would end the prevailing chaos of national claims and counter-claims in respect of maritime frontiers. It would therefore do its utmost to contribute to a solution acceptable to a two-thirds majority of the Conference, provided that such a solution did not depart unduly from justice and reason in particular circumstances. As yet, only the United States proposal seemed to fulfil those conditions, and his delegation would vote for that proposal, in spite of the ensuing disadvantages to the fishing interests of the Netherlands.

36. Mr. EMILIANI (Colombia) said that the questions under discussion were so complex and controversial that they could only be settled if every delegation adopted a conciliatory attitude. It would augur ill for the future of peace if the States composing the world community could not show sufficient ripeness of judgement to reach agreements in which the civilizing concepts of law prevailed over the irrational instincts of brute force. The great guiding principles of law must be respected and special interests must yield to them. Colombia had advocated the rule of the twelve-mile limit for the territorial sea, which was in fact part of Colombian law. His Government did not wish, however, to adopt an uncompromising attitude. Since a compromise was necessary, his delegation thought the Canadian proposal (A/CONF.19/C.1/L.4) offered the best basis for a possible compromise. Any mathematical formula was, of course, somewhat arbitrary. But that was one of the prices to be paid for precision, clarity and generality. Since it would be impossible to satisfy all conflicting views, a formula must be found which would cause least damage.

37. There was no longer any dispute about the fact that the sovereignty and defence of States required an extension of the breadth of the territorial sea beyond the traditional three-mile limit. It was equally obvious,

[7] *Official Records of the United Nations Conference on the Law of the Sea*, vol. II, annexes, document A/CONF.13/L.56.

however, that that extension should not go so far as to infringe the freedom of navigation. Colombia, sacrificing its own interests, considered that a breadth of six miles might be regarded as satisfying both considerations. Any broader zone would entail heavy expenditures for patrolling and administration, which would be ruinous in times of conflict. The countries in the process of development should pay particular heed to that consideration.

38. To adopt the six-mile limit did not, however, imply that a further six-mile fishing zone contiguous to the territorial sea would not be helpful to those coastal States which derived considerable profit from fishing. Such a provision, too, would go far towards reconciling opposing interests, since a narrower zone would not furnish the equitable guarantees that were needed and a broader zone would hamper navigation and might seriously affect the fishing industries of non-coastal States.

39. If the coastal States restricted their interests by accepting such a formula, it would be wrong of the non-coastal States to urge historic rights. A claim to such rights would constitute an attempt to wrest more than equitable compensation out of a move towards compromise. Furthermore, it lacked a basis in law. In so far as the high seas were regarded as public domain, the ancient principle applied that rights could not be acquired in the public domain by prescription; and in so far as the high seas were regarded not as public domain but *res nullius*, such alleged rights would not only not be founded in law but would be incompatible with the nature of the high seas. In other words, what was the property of all could not become the preserve of a few.

40. In view of the foregoing considerations, Colombia would be prepared to support the Canadian formula, since it was the one most likely to obtain the required majority. Should it not do so, Colombia reserved the right to revert to its earlier point of view and to continue to apply its existing rules of municipal law.

41. Mr. VLACHOS (Greece) said that his country's position was the same as it had been at the time of the first Conference. His delegation was more convinced than ever that it would not be in the interests of the international community to adopt a solution which, though it might extend the national territory of each State, would increase the responsibilities of coastal States, constitute a permanent source of dispute, and check the expansion of world trade.

42. About 30 per cent of his country's territory consisted of islands, and it had a very long coastline — 14,000 miles. It might therefore be tempted to advocate an extension of the territorial sea to twelve miles, which would enable it to join all its islands by strips of territorial sea and so secure control of the Aegean Sea. General considerations, however, had strengthened its conviction that the six-mile limit was a golden rule which should apply both to the territorial sea and to the fishing zone, which should coincide with it.

43. It could be seen from the synoptical table (A/CONF. 19/4) that, of the seventy countries listed, only eighteen maintained a limit in excess of six miles and twenty-one a three-mile limit. The optimum, then, lay between those two extremes. Moreover, the six-mile limit was best adapted to geographical realities.

44. He pointed out that, whereas the Mexican delegation proposed a maximum breadth of twelve miles for the territorial sea, it apparently admitted that the six-mile limit was the most reasonable formula, since it was prepared to allow an eighteen-mile fishing zone for States which contented themselves with a territorial sea of six miles whilst States opting for the twelve-mile limit would not have a wider fishing zone.

45. He drew attention to the work of international organization and regulation which had been proceeding for years in the economic, technical and social and juridical fields. The United Nations organs, such as the Economic Commission for Europe, were endeavouring to eliminate sources of friction and to facilitate the movement of passengers and goods. At a time when that spirit prevailed in international gatherings, it would be inconsistent to adopt rules which would restrict the freedom of movement at sea. Under articles 4 and 7 of the Convention on the Territorial Sea and the Contiguous Zone, concerning the method of measuring straight baselines, large areas of the high seas had become territorial waters. Though the increase of the territorial sea to twelve miles might seem insignificant in relation to the immensity of the part which would remain free, the full importance of the increase could be appreciated if the situation were considered in the light of the shortest sea routes. For that reason his delegation considered that it would be in the interest neither of large industrial countries, exporters of manufactured goods, nor of countries which were exporters of raw materials to adopt rules which might hamper the freedom of navigation.

46. With regard to the fishing zone, his delegation believed that the coastal State should have exclusive fishing rights in coastal waters up to a limit coinciding with that of the territorial sea. However, in view of the difficulties involved, and in keeping with a spirit of international co-operation, it considered that the United States proposal offered a solution which reconciled the interests of the coastal States and those of fishing States. That position, far from being arbitrary, was based on a general consideration and an economic consideration. In the first place, if preferential fishing rights were granted to coastal States in waters which would remain open sea, it would be necessary to take into account the pre-existing practice and rights which, having been exercised lawfully and continuously, could not be ignored. Secondly, if fishing rights were granted exclusively to coastal States in a belt extending beyond their territorial waters, the whole existing fishing system would be upset, and the consequential economic repercussions on large numbers of people in whose diet cheap fish played an important role would be most serious. There might be special cases where a country's economy depended almost entirely upon fishing. His delegation was prepared to give favourable consideration to any suggestion that would create an exception to confirm the rule.

The meeting rose at 12.45 p.m.

SEVENTH MEETING

Tuesday, 29 March 1960, at 3 p.m.

Chairman: Mr. José A. CORREA (Ecuador)

In the absence of the Chairman, Mr. Sörensen (Denmark), Vice-Chairman, took the Chair.

Consideration of the questions of the breadth of the territorial sea and fishery limits in accordance with resolution 1307 (XIII) adopted by the General Assembly on 10 December 1958 *(continued)*

GENERAL DEBATE *(continued)*

Statements by Mr. Ulloa Sotomayor (Peru), Mr. Mameli (Italy) and Mr. Pěchota (Czechoslovakia)

1. Mr. ULLOA SOTOMAYOR (Peru) regretted that the present Conference had been convened without the necessary diplomatic and technical preparation. Any decisions it might reach would therefore lack the authority proper to generally accepted agreements. The influence of political groupings might eventually result in the formulation of texts, which would not, however, be binding on States that did not sign and ratify them.

2. Preparatory negotiations were particularly indicated in the present instance because the closely connected questions of the breadth of the territorial sea and of fishery limits raised problems that were bilateral rather than multilateral in character. They did not affect all countries; some States, for geographical, economic or other reasons, had no interest in them. The extent to which States engaged in fishing also varied widely. Few countries had large fishing fleets, whether offshore or distant-water. Lastly, very few countries had been obliged by economic and human factors to assert their special concern in the conservation and utilization of large marine resources in their adjacent seas in the face of the indiscriminate exploitation of that wealth for lucrative ends to the benefit of foreigners.

3. The problem facing the South-American States bordering on the Pacific Ocean was not a political, but an economic and social one, which had its legal aspects. For nearly fifteen years those countries had been waging a peaceful campaign to safeguard their natural resources. It had been claimed that the measures they had taken to protect that wealth from undue exploitation by powerful outside fishing interests were inconsistent with international law which, it was argued, prescribed very narrow limits for the territorial sea and conferred the broadest fishing rights on everyone on the high seas beyond. The fallacy of that argument had, however, been demonstrated by the now general rejection of the original three-mile rule. It had also been objected that Peru, Chile and Ecuador had acted unilaterally; but unilateral action by States could and did give rise to rules of international law, as witnessed the two Proclamations issued by President Truman on 28 September 1945 concerning the continental shelf and coastal fisheries. As to the delimitation of the territorial sea, that was, by its very nature, a matter of unilateral state action. For instance, in the Principles of Mexico on the Juridical Régime of the Sea, proclaimed in 1956 by the Inter-American Council of Jurists, the right of a costal State to fix the breadth of its territorial sea within reasonable limits has been recognized in the following terms:

> " Each State is competent to establish its territorial waters within reasonable limits, taking into account geographical, geological, and biological factors, as well as the economic needs of its population, and its security and defence." [1]

4. It has also been claimed that the indiscriminate freedom of international fishing was dictated by the interests of humanity. Peru and the other South-American Pacific States had pointed out in reply that the measures they had been obliged to introduce in no way discriminated against those foreign fishermen who were prepared to abide by the regulations laid down, and the control systems established, for fishing by nations. It had also been implied that the rules prescribed for the South Pacific might create dangerous situations if applied in other seas. He wished to emphasize in that regard that it had never been the intention of Peru or the other South-American States concerned to assert rules of a universal character. It was precisely because of the diversity of situations existing in different parts of the world that those States supported the principle that the determination of the breadth of the territorial sea was within the jurisdiction of the coastal State. Therefore, while claiming the right to assert a rule consistent with the needs of their populations, they had no objection to other States asserting different rules adapted to their local circumstances.

5. The proposals submitted by Canada (A/CONF. 19/C.1/L.4) and the United States of America (A/CONF. 19/C.1/L.3) were alike inadequate in at least two important respects. First, the extent of the fisheries zone which it was proposed to grant the coastal State was meagre in the extreme, since neither proposal went beyond twelve miles in that respect. Second, both proposals placed the emphasis on exclusive fishing rights, whereas the aims pursued by Peru and the other South-American Pacific States had as their objective the conservation of marine resources for the benefit, primarily, of the populations which largely depended upon them for their livelihood, not discrimination against foreign fishing interests. In addition, all the measures adopted by Peru and the other States concerned explicitly reaffirmed the freedom of navigation.

6. Turning to the question of historic rights, he recalled that at the first United Nations Conference on the Law of the Sea, the United States delegation had at first suggested that ten years' practice of fishing should be required to establish a " historic right ",[2] but had subsequently reduced that period to a mere five years,[3] a figure which reappeared in the United States proposal submitted to the present Conference. That change had

[1] See *Final Act of the Third Meeting of the Inter-American Council of Jurists, Mexico City, 17 January - 4 February 1956* (Washington, D.C., Pan-American Union, 1956), p. 36.

[2] *Official Records of the United Nations Conference on the Law of the Sea*, vol. III, annexes, document A/CONF.13/C.1/L.159.

[3] *Ibid.*, document A/CONF.13/C.1/L.159/Rev.1.

been prompted by a desire to assert the claim to fish off the Peruvian coasts by " tuna clippers ", flying the United States flag, which had, in certain cases, begun to operate only after 1950. It was unnecessary to point out that historic rights could not be established by a practice of a mere five or ten years' standing; only in the context of centuries could the term " historic rights " be meaningful.

7. In keeping with the Principles of Mexico, which recognized that each State was competent to fix its territorial sea within reasonable limits, and taking into account the various factors specified therein, Peru had in 1947 adopted measures governing the extent of its jurisdiction over sea areas. Peru could not consider amending that decree — a possibility provided for in the text — unless it was offered a formula that adequately met its requirements.

8. The special position of Peru in relation to its adjacent sea was determined by historical, geographical and political factors and by exceptional biological conditions. The historic roots of Peruvian interest in that sea could be traced to pre-Inca times. During the Spanish domination, England, which had asserted its power on the seas, had agreed by international treaties entered into with Spain to renounce all right to trade in the sea adjacent to the coasts of Peru.

9. Social and economic conditions, relating to the country's food supply, the coastal economy and the production of guano, also justified Peru's attitude to its adjacent sea. The relevance of those conditions, and the urgent need to study them, was demonstrated by the approval by the United Nations Special Fund of a request from Peru for assistance in setting up a national institute for the study of the country's marine resources.

10. The population of Peru was already under-nourished and its rate of increase was alarming; new sources of food must therefore be urgently sought. A large part of the population lived in the coastal area, which was mostly arid; it therefore had to supplement its meagre agricultural production with that of its coastal fisheries. A country faced with so urgent a need to protect its fast-growing population from the threat of starvation could not consent to the indiscriminate exploitation of its marine resources for the benefit of commercial interests from distant countries. The vital needs of the coastal population could never be sacrificed to the interests of those who were simply seeking to enrich themselves by providing additional foodstuffs for the inhabitants of regions where under-nourishment was unknown.

11. Moreover, Peru had to protect the interests of tens of thousands of its citizens engaged in industries based on fishing.

12. Lastly, there was the importance of guano — supplies of which depended on the conservation of marine life — for the country's agriculture, especially its two main crops: cotton and sugar-cane. Peru depended largely on its exports of agricultural products, 60 per cent of its people being engaged in farming or related activities.

13. In recent years, assistance to the under-developed countries had become the *leit-motiv* of international relations. The highly developed countries had recognized their duty to provide such assistance. It was paradoxical that the same large countries that had proclaimed their willingness to assist the under-developed countries should simultaneously seek to protect private interests exploiting the smaller countries, and thus help to perpetuate poverty and inequality. It would be possible to deal at length with that situation from the point of view of the equality of rights of States and the doctrine of the abuse of rights, but the problem was above all a human one, and international law, which had for long functioned exclusively as an interstate law, was becoming increasingly concerned with human beings.

14. Attempts had been made to minimize the economic and human interests of coastal populations by invoking the requirements of the conservation of the living resources of the sea. But surely the coastal State was the one best qualified to enact regulations, and to introduce control measures, for that purpose, in the light of the special needs of its own area.

15. Peru was in no way opposed to the formulation of rules susceptible of universal application by the international community. It could not, however, agree that the desire to formulate universal rules of international law should sanction condonation of injustice, disregard for moral principles or endorsement as an international practice of what was simply an abuse. It was unnecessary to apply blindly a rigid uniform rule at all times and in all circumstances in order to arrive at universally valid legal principles. The acceptance of uniform criteria that would make it possible to adapt flexible rules to varying situations was all that was required.

16. Unfortunately, the proceedings of the 1958 Conference offered little hope of an understanding attitude on the part of States which were defending the interests of those who exploited the living resources of Peru's adjacent sea; and the opening exchanges at the present Conference provided little hope of improvement in that respect. The Peruvian delegation was confident that the Latin-American countries would remain faithful to the ideals of justice, and also placed its trust in the new countries which had gained their independence during the last fifteen years. Those countries were faced with the problems bequeathed to them by colonial legislation in respect of the breadth of the territorial sea and fishery limits, and would naturally wish to examine their own needs carefully, in the light of their peculiar geographical, economic and social conditions, in order to adopt the solution best suited to their own needs. They were also faced by a multiplicity of other equally urgent and complex problems, and should therefore be allowed sufficient time to consider what their requirements were in the way of the territorial sea and fishery limits.

17. Any attempt to deny Peru its special position in relation to the resources of its adjacent sea would be a denial of the facts of nature. Those resources were nature's compensation for the aridity of Peru's land domain; and they should be used to wipe out malnutrition and poverty among the coastal inhabitants rather than to enrich foreign commercial undertakings engaged in the pursuit of private gain. When an objective technical study of Peru's marine resources had been completed with the co-operation of impartial international bodies, his country's exceptional position would

certainly be confirmed by the international community, and its right acknowledged to jurisdiction over a sea area greater than that which was being now advocated on grounds irrelevant to the case of Peru, and which could not be accepted without sacrificing the present and future interests of its inhabitants.

18. Mr. MAMELI (Italy) said that his country's attitude to the questions on the Conference's agenda had not changed since the first United Nations Conference on the Law of the Sea. That attitude rested on respect for existing principles of international law — a fact that he wished to reaffirm, for, although the Italian delegation was most anxious to see as wide an agreement as possible reached, it was obliged to remind the Conference that the questions under consideration were already governed by the general rules of the law of nations, the fruit of centuries of effort by the international community.

19. With regard to the territorial sea, the Convention on the Territorial Sea and the Contiguous Zone had recognized the rights of the coastal State, and those that it must grant other States, in its territorial sea. The only point at issue was that of the breadth of the territorial sea. Italy's position on the subject had always differed from that of the countries which had traditionally supported the three-mile rule. Italy had always followed the six-mile rule, and in agreements concluded with other Mediterranean countries had recognized the six-mile limit claimed by them for their territorial sea. But it must be emphasized that the Italian Government had never believed that international law on the matter resided exclusively in the principle that each State was free to determine the breadth of its territorial sea as it saw fit and to require other States to observe the limit thus fixed.

20. He referred to the works of Mr. Anzilotti, an eminent Italian international lawyer, whom the representative of Saudi Arabia had cited at the Committee's first meeting to support the argument that no general rule of international law had been developed to replace the obsolete rule based on the range of coastal artillery. In fact, Mr. Anzilotti's views did not support the conclusions which the Saudi-Arabian representative wished to draw. While recognizing that the three-mile rule was by far the most widely applied, Mr. Anzilotti had observed that it did not constitute a general rule recognized as binding by all States; but, pursuing that line, he had reached the final conclusion that the sole extant general rules on the subject were those laid down in the many bilateral agreements fixing the breadth of sea in which the parties were free to engage in certain activities or were obliged to abstain from certain other activities. He had concluded that where there was no true agreement, either explicit or tacit, there were no reciprocal obligations — a conclusion that applied with just as much force to the non-coastal States as to the coastal State. The latter would not have to observe the three-mile limit in determining the breadth of its territorial sea; conversely, the non-coastal States would be no more obliged to recognize as part of the coastal State's territorial sea any breadth the latter might claim beyond three miles, and accordingly would not have to abstain from engaging therein in the activities that all States were at liberty to exercise on the high seas.

21. Moreover, Mr. Anzilotti's conclusions were corroborated by those of the International Law Commission, which had recognized in article 3 of its draft rules on the law of the sea that international practice was not uniform with regard to the delimitation of the territorial sea, and which had further considered that to extend the territorial sea beyond the twelve-mile limit would be a breach of international law. In addition, the Commission had noted that many States had established a breadth in excess of three miles, and that many other States did not recognize that breadth when their own territorial sea was narrower. Furthermore, a State which extended its territorial sea to between three and twelve miles could enforce such extension only in the case of those States which did not oppose it; others would retain their right not to recognize the extension of the territorial sea beyond three miles. The view expressed by the International Law Commission on the existing situation in international law coincided exactly with that of Mr. Anzilotti.

22. The present situation was certainly to be regretted, because it might give rise to disputes. It was to forestall such developments that efforts were being made to reach a general agreement, which had so far proved impossible of achievement. It was plain that such general agreement could only be reached through mutual concessions. In that connexion the States which had traditionally adhered to the three-mile rule had already made a very generous concession by agreeing to a maximum limit of six miles. It now behoved those States which wanted higher limits to make sacrifices in their turn. He pointed out to the representatives of the Soviet Union and Mexico that, if common ground was to be found, it was not enough simply to explain that in the proposals submitted by the delegations of those two countries the twelve-mile limit represented a maximum which no State would be obliged to adhere to in determining the breadth of its territorial sea. What prevented certain States from agreeing to the principle of a maximum breadth of twelve miles was certainly not the fact that they would themselves have to assume the responsibilities pertaining to so broad a territorial sea, but rather their concern at the prospect of other States' closing such large tracts of the high seas to international use. The importance of the principle of the freedom of the seas for the life of the international community could not be too strongly emphasized. Partial abrogation of that principle for the sake of the advantages, in any case doubtful, of sovereignty over broader territorial seas would entail a serious risk. He urged the representatives of the many countries which were in favour of extending the territorial sea to give that consideration careful thought.

23. Turning to the question of fishing limits, he recalled that the sponsors of certain proposals had endeavoured to assimilate the contiguous zone to a zone in which fishing rights would be reserved to the coastal State. In its respect for international law, the Italian delegation would point out that existing law recognized neither a fishing zone nor exclusive fishing rights in the contiguous zone. Moreover, the very existence in international law of a contiguous zone had been widely contested. Although the partisans of the contiguous zone might regard it as a part of the high seas outside the territorial sea of a

State, in which the latter enjoyed customs, public health or immigration privileges, the contiguous zone had never been regarded in general international law as a zone exclusively reserved for fishing. In that respect the International Law Commission's opinion was quite definite; the Commission had not wished to grant the coastal State the exclusive right of fishing in the contiguous zone. That opinion had been fully endorsed by the first Conference. The principle by which, in general international law, a State might not invoke exclusive fishing rights in any zone outside the limits of its territorial sea had been clearly and categorically confirmed in article 24 of the Convention on the Territorial Sea and the Contiguous Zone.

24. The Italian Government, however, recognized the possibility of taking account in specific agreements of the special situation of certain countries and had given proof of that attitude by concluding with a neighbouring country a convention under which it recognized certain fishing rights within a contiguous zone of four miles outside the territorial sea. Its goodwill was therefore not in question. But his Government did not wish to see that exception converted into a general rule by the establishment of a series of zones of the high seas which would become so many reserved fishing zones for the benefit of a single country. At the first Conference, the Italian delegation had declared its readiness to make a sacrifice to facilitate the conclusion of a general agreement, and it was still prepared to subscribe to an agreement granting the coastal State preferential fishing rights in the contiguous zone, on condition that the fishing vessels of other countries which traditionally fished in those waters would be allowed to continue to do so without let or hindrance.

25. For that reason his delegation would support the United States proposal (A/CONF.19/C.1/L.3). But it could not go further by agreeing to solutions that it considered would inflict serious damage on the interests of the international community as a whole. It could not, therefore, support a formula that would amount to excluding from a part of the high seas transformed into a contiguous zone fishing vessels which, vis-à-vis the coastal State, were already at the disadvantage of having to steam a longer distance. He urged representatives to reflect on the consequences for the world economy of adopting such a formula. The main fishing grounds were situated precisely in that area of the high seas lying between six and twelve miles from the coast. To take only the case of Italy, to prohibit its craft from fishing in such areas in the Mediterranean Sea and in the Atlantic Ocean would entail laying up forty per cent of the Italian fishing fleet, thus depriving some 400,000 persons of their livelihood. Those figures gave some idea of the effects of such a decision on the economic and social situation of countries engaged in fishing, on the food supply of the whole world and on the general prosperity. It should not be forgotten that the fifteen or so countries which, according to the Canadian representative, alone had an interest in maintaining their fishing rights in the contiguous zone were precisely those countries whose workers to a very large extent ensured the supply of fishing products to the whole world. A United Nations conference could not possibly adopt solutions which would inevitably lead to disaster.

26. For those reasons, the Italian Government could not support either the Canadian proposal (A/CONF. 19/C.1/L.4) or the Mexican proposal (A/CONF.19/C.1/L.2), both of which, although prompted by a spirit of conciliation, would amount in practice to granting the coastal State in the contiguous zone all the advantages it enjoyed in its territorial sea without any of the corresponding disadvantages. With regard to the Mexican proposal in particular, it was to be regretted that the notion of a territorial sea combined with an elastic contiguous zone should have found favour with the Latin-American countries, which were strongly attached to lucidity in the law. Moreover, the obligation to review the breadth of the contiguous zone every five years would not be compatible with the purpose of the Conference, which was to codify existing international law on the subject.

27. Should the compromise formula proposed by the United States delegation not be acceptable to the Conference, the Italian Government would be compelled to abandon its hope of a general agreement and to take its stand on the strict observance of the international law currently in force, which did not recognize contiguous fishing zones.

28. His delegation's sole aim was to protect the interests of the community. It was all too easily forgotten that although the high seas were open to all, fish stocks were not equally distributed therein. If the idea of an exclusive fishing zone reserved for the coastal State were accepted, the fishing vessels of certain countries would one day find themselves excluded from those regions where fish was plentiful. That was why the Italian Government defended the principle that the high seas and their resources were in the common ownership of all mankind.

29. Mr. PECHOTA (Czechoslovakia) said that, although his country was land-locked, it owned merchant ships which navigated in all the oceans of the world and called at many great ports. It had therefore a direct interest in the subjects under dicussion, and, as a firm believer in international co-operation on terms of equality, would do all in its power to promote the success of the Conference.

30. Although the first United Nations Conference on the Law of the Sea had been unable to settle the present issues for reasons that were known to all, it could be credited with a certain measure of positive achievement: in addition to adopting four valuable international conventions, it had disproved the existence of the so-called three-mile rule upheld by certain States, as of any rule establishing a uniform breadth of territorial sea for all States. It had brought out the close relationship between the breadth of the territorial sea and the safeguarding of the sovereign rights and interests of coastal States, which led to the logical conclusion that a State should be entitled to determine the breadth of its territorial sea for itself, with due regard for its own needs and interests and for those of international navigation. Lastly, the first Conference had indicated practical means of resolving the problem, concentrating its efforts on the elaboration of a formula whereby minimum and maximum breadths for the territorial sea would be laid down in accordance with international law. Moreover, the draft articles on the subject prepared by the International Law Commission embodied guiding principles

which should have led the first Conference to a solution. After a careful study of existing standards of international law and current international practice, the Commission had arrived at the indisputable conclusion that the establishment of a breadth of territorial sea of between three and twelve miles was not a breach of international law; in other words, it was recognized by international law.

31. Any fresh attempt to reach agreement on the breadth of the territorial sea and on the closely associated problem of fishing limits would have to be based on existing circumstances and on the recognition, in accordance with the Charter of the United Nations and other international instruments, of the right of all States to safeguard their legitimate interests. The present Conference should be guided by a desire to further the economic and political development of States and co-operation between them on terms of full and sovereign equality. All the members of the Conference were aware that it was neither possible nor necessary to fix a uniform breadth of territorial sea or zone of exclusive fishing rights for all States, and all the proposals so far submitted recognized the right of States to fix those breadths within certain limits, although they differed in the maximum breadth to be imposed. The breadth of the territorial sea was determined by historical circumstances and the needs of each individual State. It was based on such major considerations as security, territorial integrity and prudent exploitation of the resources of the sea in the vicinity of the coastal State. The latter was clearly the best judge of such matters, and other States should respect the measures it adopted to safeguard its legitimate interests. Accordingly, the correct approach to the present issue was one that would strike a balance between the two major principles of international law in the matter: that of the sovereignty of the coastal State; and that of the freedom of the high seas.

32. It had sometimes been argued, without foundation, that an extension of the territorial sea, even within the twelve-mile limit recognized by existing international law and current State practice, would restrict the freedom of navigation. Yet the first Conference had reaffirmed the principle of international law whereby the ships of all States enjoyed the right of innocent passage through territorial waters. Existing restrictions did not as a rule affect merchant shipping, but applied only to the passage of warships and fishing by foreign craft. And past events had shown that the presence of foreign warships in the coastal waters of a State, or unauthorized fishing in those waters by a foreign State, were far from conducive to friendly international relations.

33. The argument that land-locked States lacking a coastline of their own were bound to favour the narrowest possible territorial sea was quite unjustified. The primary concern of those States, which included his own, was that neighbouring coastal States, of whose territorial waters they made use, should be placed in a position to ensure their own territorial and economic integrity, thereby creating stable conditions for vessels exercising the right of innocent passage. Since that right was enjoyed by all States, the actual width of the territorial sea was not a decisive consideration for land-locked States seeking access to the sea.

34. If, as was essential, the legitimate defence and economic needs of Governments were to be recognized, the Conference would have to take into account all those genuine factors which at present determined the trend of international practice: State practice since the first Conference had convincingly demonstrated that more and more countries were coming to accept the rule that, within the framework of its sovereign rights, each State was free to determine the breadth of its territorial sea and fishing zone between three and twelve nautical miles. States from almost every quarter of the globe had promulgated such legislation during recent years. They included the Chinese People's Republic, Iraq, Iran, Panama and Saudi Arabia. And Iceland was one of the States which had recently enacted legislation providing for a zone of exclusive fishing rights.

35. In the light of that practice and in that of the principles of existing international law, the Czechoslovak delegation contended that the rule governing the breadth of the territorial sea must be based on principles that wholly reflected the present legal situation; that it must be non-discriminatory; and that it must be consistent with the modern trend of development of international law. Those desiderata were met by the Soviet Union proposal (A/CONF.19/C.1/.L.1), the effect of which would be to enable any State to fix the breadth of its territorial sea in accordance not only with its security and economic interests but also with the pertinent historic, geographical and other factors. Its application extended to any State, whatever the breadth of its territorial sea between the limits of three and twelve miles, and it did not preclude any State from freely choosing within those limits in the future.

36. Such proposals as those of Canada (A/CONF.19/C.1/L.4) and the United States of America (A/CONF.19/C.1/L.3), on the other hand, imposed a limit of six miles for the territorial sea and hence failed to meet the position of a considerable number of States — more than twenty — which in the conditions created by current international practice had already established their territorial sea within the limits of nine to twelve miles.

37. The foregoing clearly confirmed that the most equitable solution that would take account of the interests of all States was that providing for a maximum breadth of twelve miles as in the Soviet Union proposal and in article 1, paragraph 1 of the Mexican proposal (A/CONF.19/C.1/L.2).

38. His delegation considered that the principles underlying the Soviet Union proposal would also prove acceptable to land-locked States whose rights to freedom of access to the sea and of innocent passage through the territorial sea of coastal States was recognized by international law.

39. His delegation favoured the settlement of all international problems, including those before the Conference, through co-operation based on the sovereign equality of all States as enunciated in the Charter of the United Nations, and would on the present occasion support any proposals designed to reconcile diverging points of view. With mutual understanding and respect for the legitimate interests of all States, real progress would surely be made in resolving the important issues at stake.

The meeting rose at 4.55 p.m.

EIGHTH MEETING

Wednesday, 30 March 1960, at 10.45 a.m.

Chairman: Mr. José A. CORREA (Ecuador)

In the absence of the Chairman, Mr. Sörensen (Denmark), Vice-Chairman, took the Chair.

Consideration of the questions of the breadth of the territorial sea and fishery limits in accordance with resolution 1307 (XIII) adopted by the General Assembly on 10 December 1958 *(continued)*

GENERAL DEBATE *(continued)*

Statements by Mr. Amado (Brazil), Mr. Gasiorowski (Poland) and Mr. Bartos (Yugoslavia)

1. Mr. AMADO (Brazil) said that, although Brazil had no special interest in the breadth of the territorial sea or fishery limits, its delegation would co-operate in a constructive spirit in the quest for a solution to the problems before the Conference. The progress made since the Conference for the Codification of International Law, held at The Hague in 1930, gave much ground for optimism. The United Nations Conference on the Law of the Sea, in expressly recognizing the rights enjoyed by the coastal State in the contiguous zone, had gone much further than the coastal States could have hoped. He referred to paragraph 8 of the International Law Commission's commentary on article 68 of its draft articles concerning the law of the sea.[1] Ever since the International Technical Conference on the Conservation of the Living Resources of the Sea, held at Rome in 1955, jurists had recognized the right and power of the coastal State to intervene in any activity occurring off-shore in the high seas. The coastal State had the right, under the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas, to guard its nationals against the loss of certain species of fish, and it had the power to take unilateral action on the high seas. It had a special interest in a part of the high seas by virtue solely of its geographical position. It had a recognized right to participate in conservation arrangements and, if such arrangements could not be agreed upon with other States, to enforce its own conservation measures.

2. International maritime law had advanced so far and so fast that it had probably rendered obsolete the claims made earlier by certain States concerning their powers in the high seas beyond territorial waters or concerning the extension of territorial waters to enormous breadths.

3. So far as the breadth of the territorial sea was concerned, all that could be said was that there was no uniform rule. That was precisely the conclusion of the International Law Commission, which had added that international law did not justify an extension of the territorial sea beyond twelve miles.[2] It had never stated, however, that the breadth could extend from three to twelve miles. There was considerable confusion on that point. Of course States could extend the territorial sea if they wished, but the Commission had not formulated any rule to that effect. What it had said was that some States recognized three miles, others four, others six, others twelve. The Commission had simply recorded facts.

4. There was nothing to prevent any State from fixing the outer limit of its territorial sea at twelve miles. However, it might be doubted whether that was really necessary. An excessive breadth of territorial sea might well involve strategic, financial and political disadvantages, owing both to the excessive defence expenditure needed and to the increased possibility of incidents and disputes. Brazil itself would find considerable drawbacks in a twelve-mile limit. The Brazilian delegation was not offering any solution; it was merely raising the question, in the hope that some delegations might reconsider their position and so open the way to general agreement.

5. The question of fishery limits was, however, the heart of the matter. In the past, all problems relating to fishing had been settled by regional agreements, either bilateral or multilateral, concerning specified maritime zones. Local factors, the most important being geographical position, gave each maritime region its own peculiarities, and the differences were accentuated by the different level of industrialization in the countries concerned.

6. The Conference was trying to frame general rules concerning matters which had always been dealt with by regional instruments. For the first time in history an attempt was being made to solve the problem of fishing by means of an international conference. The real point was not, as it had been in the past, to fix the breadth of the territorial sea for the purposes of sovereignty. What was really at stake was fishing, the exploitation of the living resources of the sea. It was an economic matter, which was not connected with the territorial sea in the traditional nineteenth-century sense.

7. Above all, there must not be any restriction of the principle of the freedom of the high seas. Accordingly, recognition of an exclusive fishing zone would serve the purpose of safeguarding the economic interests sought by certain States when they argued their need to extend the breadth of their territorial waters. The conditions of modern life, the interdependence of States and modern technical advances had created an intermediate zone, in which coastal States were given certain special rights, including fishing rights.

8. There too it must be noted that practice was not uniform, and that the Conference's task was to find, in international law, general solutions applicable to situations which were mainly regional in nature and which had for that very reason been traditionally regulated by bilateral or multilateral agreements.

9. It should not be forgotten that great economic interests were at stake. Highly developed States had huge fishing fleets owned by great companies, equipped with all the resources of the most modern technique, which scoured the seas, following the migration of species and over-fishing to such an extent that they were imperilling the survival of whole stocks of fish. On the other hand,

[1] *Official Records of the General Assembly, Eleventh Session, Supplement No. 9*, pp. 42-43.

[2] *Ibid.*, pp. 12-13.

States which had not yet been able to equip themselves to rival the highly developed States suffered greatly from such over-fishing. Obviously it was too simple to complain about progress made by others. The huge fishing fleets represented huge investments and they harvested food for large populations. On the other hand, it would hardly be fair to disregard situations such as that of Peru and other South American countries on the Pacific coast and such as that of Iceland. The problem was how to reconcile such divergent interests and how to devise rules of international law applicable to such diverse situations. The difficulty was not that countries had not wished to solve the problem, but that they had so far been unable to do so.

10. The main difficulty was that no two seas were alike; the North Sea was very different from the Pacific Ocean. One mile in the North Sea might contain more resources than 200 miles in other seas. Hence, to reduce the problem to a single universal formula was not easy and never had been. That was the reason why fishing had always been the subject of regional bilateral or multilateral agreements. The problem was not, however, insoluble, for nearly all contemporary problems had become international owing to the speed of modern travel. After the success of the first Conference the courage to take a further step forward would suffice. That step might be expected, particularly from States which already held in common the concept of a twelve-mile limit for the breadth of the territorial sea and the fishery limits combined. They undoubtedly constituted an important proportion of the membership of the Conference.

11. If almost all countries accepted twelve miles for fishery limits, the main question on which the Conference was divided was the concept of twelve miles for absolute state sovereignty. Although certain countries continued to press for a territorial sea of twelve miles, it was doubtful whether they really meant to enforce their claim. If a country assumed the privilege of taking twelve miles for its territorial sea, it must have the political and other means to enforce its right. Geography was likely to be the deciding factor — as it almost always was. If the Soviet Union, for example, was situated on the North Sea instead of on the Baltic, perhaps its territorial sea would not be twelve miles broad. On the other hand, if the United Kingdom were on the Baltic, the breadth of its territorial waters would probably be twelve miles.

12. The first duty of the State was to safeguard its people's interests. In the North Sea interest would prompt a country to try to develop fishing. It could easily be appreciated that the loss of three miles of the North Sea would be a heavy blow to the United Kingdom or to France. The conciliatory gesture of the United Kingdom and France in accepting six miles was the more commendable. The special situations mentioned by the Viet-Nam and Philippine delegations could not be disregarded, and showed even more clearly how hard it would be to reach a uniform solution.

13. A development towards a general formula would require at least a minimum of agreement on what were called historic rights, designed to safeguard the legitimate interests of countries which had been fishing since time immemorial sea areas within the fishery limits which would be recognized as exclusively reserved to the coastal States. There too, however, it was not impossible that the parties concerned might reach some common ground if they were really convinced that to defer the solution of those problems could only aggravate the difficulties and, in the long run, harm everyone. Brazil itself suffered from none of those difficulties, but wished to show that it was well aware of the legitimate interests at stake.

14. Mr. GASIOROWSKI (Poland) said that the entire law of the sea ultimately hinged on the delimitation of the territorial sea. Accordingly, it was no exaggeration to say that the implementation of the Conventions adopted by the 1958 Conference depended to a large extent on the success of the present Conference in defining the breadth of the territorial sea. It was not surprising, therefore, that, although two years had elapsed since the four Conventions in question had been drawn up, the prospects for their implementation were not encouraging. As the representative of the Secretary-General had said in his opening speech at the 1st plenary meeting, only two States had so far ratified the Convention on the Territorial Sea and the Contiguous Zone and only one State the Convention on the High Seas and the Convention on Fishing and Conservation of the Living Resources of the High Seas. Since, under one of the final clauses of the Conventions, entry into force was dependent on ratification by twenty-two States, it was very doubtful whether in the present circumstances the Conventions would come into force. If the present Conference failed, it would, it seemed, not only make it impossible to codify the law of the sea, but would prejudice the codification of international law in general.

15. It was therefore essential that everything possible should be done to make the Conference a success. If the Conference was able to overcome the difficulties in its way, a very favourable atmosphere would be created for the coming international conversations, whose importance in the interests of peaceful co-operation among nations could not be too strongly emphasized.

16. The attitude of the delegation of Poland was determined by the rules of international law and by the realities of international life. In addition to the three-mile rule for the breadth of the territorial sea there were the " Scandinavian " four-mile rule, the " Mediterranean " six-mile rule and a twelve-mile rule, not to mention the more special cases in which the limit was fixed at five, nine or ten miles. All those limits came within the range of three to twelve miles. Those examples undoubtedly reflected existing practice, and since it was a well-established principle that the practice of States was the basis of international law, the logical conclusion was that international law recognized the right of States to fix the breadth of their territorial sea between the limits of three and twelve miles. It was evident that such a norm of international law did exist. It did not impose on States the obligation to apply a uniform rule, whether of three, six or twelve miles, but only recognized their right to make a choice between the given limits.

17. That conclusion was so logical that it was not easy to evade it, and sometimes it was implied even by those who did not wish to recognize it. It was for that reason that the International Law Commission, although reluctant to admit the existence or non-existence of a rule of international law on that question, had nonetheless

stated that international law did not permit an extension of the territorial sea beyond twelve miles. It therefore followed that international law permitted an extension of the territorial sea up to twelve miles. Recognizing the absence of a uniform rule concerning the delimitation of the territorial sea, the Commission had recommended that the breadth of the territorial sea should be fixed by an international conference. In his opinion, the task of the present Conference was simply to formulate the principle, which already existed as a rule of customary law, that the State had the right to fix freely the breadth of the territorial sea up to a limit of twelve miles.

18. That view was indeed implied indirectly in the Convention on the Territorial Sea and the Contiguous Zone which was adopted in 1958. Mr. Gasiorowski referred to article 7 concerning bays, and recalled that in the debate on the question of determining the maximum length of the closing line across the mouth of a bay so that its waters could be considered as internal waters, the First Committee and later the Conference in plenary session had adopted a proposal which the Polish delegation and two other delegations had sponsored.[3] The proposal fixed the length at twenty-four miles, and that distance was actually laid down in paragraph 4 of article 7. The implication was obvious, because the distance in question had been calculated as twice the breadth of the territorial sea. That provision had been commented on by Sir Gerald Fitzmaurice in an article [4] which stated that the distance of twice twelve miles might imply, for some persons, the recognition of the twelve-mile rule for the delimitation of the territorial sea.

19. The twelve-mile rule was often compared with the three-mile or six-mile rules to show that it was exaggerated. But the fact that there was a general tendency for a coastal State to increase the extent of the contiguous waters over which it exercised rights was ignored. The question of the territorial sea was only one special aspect of that tendency. In the course of the last ten years several States had extended their territorial sea. There were even States which had proclaimed their sovereignty over the sea up to a distance of 200 miles or more. Special cases were also made out for encroaching on the high seas, such as the existence of a continental plateau or the conservation of living resources. In the light of that general tendency the twelve-mile rule seemed very modest and, if it were clearly laid down, it would curb excessive extensions of the territorial sea. The rule in question therefore met all the requirements of a compromise rule, which in fact it was.

20. The foregoing considerations were in favour of the proposal submitted by the Soviet Union (A/CONF.19/C.1/L.1). That proposal, in fact, was in harmony with existing international law as well as with the realities of international life: while it took into consideration the current tendency to extend the territorial sea, it ignored extremes. The proposal in question was clear, represented a compromise and was based on the principle of the equality of States; it granted no privilege to any one at the expense of others. By contrast, the United States proposal (A/CONF.19/C.1/L.3) relied on so-called " historic rights " for the purpose of granting to certain States alone the right to fish in a zone contiguous to the territorial sea of other States. Such a concept was open to the most serious objection. It had no basis in law and sought to discriminate against a very large majority of States, and especially against the new, underdeveloped States which were not as yet equipped to fish in distant waters. It was incompatible with the efforts being made under the auspices of the United Nations to promote the economic development of the underdeveloped countries. The delegation of Poland fully supported the criticism of the proposal expressed by the leader of the Canadian delegation at the 5th meeting.

21. It had been argued that the twelve-mile rule would cause practical and technical difficulties if ships had to navigate at a distance of more than twelve miles from the coast, and if aircraft could not use the superjacent air-space. He did not think, however, that those technical difficulties were insurmontable. In any event, the case had been badly put. There was no reason whatever for ships to abandon their former routes and navigate outside the territorial sea; the right of innocent passage was universally recognized. He referred to the Convention on the Territorial Sea and the Contiguous Zone which clearly stated in article 14 of the principle that " ships of all States, whether coastal or not, shall enjoy the right of innocent passage through the territorial sea ". Where straits were concerned, the Convention stipulated in article 16, paragraph 4, that there should be no suspension of the innocent passage of foreign ships through straits which were not only the means of communication between two parts of the high seas but also between a part of the high seas and the territorial sea of a foreign State.

22. So far as air navigation was concerned, he referred to article 5 of the 1944 Convention on International Civil Aviation. The right to fly over the territory of a State necessarily implied the right to fly over its territorial sea. In regard to scheduled air services, he cited article 1 of the International Air Services Transit Agreement, signed at Chicago in 1944, which likewise implied the right to fly over the territorial sea.

23. In conclusion, Mr. Gasiorowski said that the arguments against the twelve-mile rule were not valid and could not outweigh the arguments in its favour.

24. Mr. BARTOS (Yugoslavia) said it would be tragic if the Conference closed without working out a universally recognized rule codifying the international law respecting the breadth of the territorial sea and the contiguous fishing zone. Such a failure would in effect condone the right of each State to fix its own limits and would encourage States which had in the past been restrained by certain scruples to avail themselves of that right.

25. As yet, there was no codified rule concerning the breadth of the territorial sea and the contiguous fishing zone. That the alleged limit of three nautical miles was an abstraction was evident from the practice of many States and from their desire to evolve a different rule. In so far as general acceptance was the foundation of any rule of international law, it was clear from the synoptical table prepared by the Secretariat (A/

[3] *Official Records of the United Nations Conference on the Law of the Sea*, vol. III, 47th meeting, para. 9.

[4] " Some Results of the Geneva Conference on the Law of the Sea ", *The International and Comparative Law Quarterly*, vol. 8, part 1, January 1959, p. 73.

CONF.19/4) that the three-mile rule had no real existence. Nor did that alleged rule have the antiquity which its defenders claimed. In support of his argument, he cited a note sent by the State Department of the United States in 1793 to the British and French Legations at Washington, concerning the breadth of the territorial sea for purposes of neutrality in time of war.[5] That note recognized explicitly that, at the time, certain positive rules had been applied by certain States, fixing different breadths for their territorial seas, and that the United States had recognized those differences. Since then, Mexico, Portugal and Russia had extended their territorial seas to nine, six and twelve miles, respectively. Accordingly, the problem of diversity of rules was not a new one. Secondly, the note expressly recognized the right of the coastal State to determine the breadth of its territorial sea, for any purpose, including that of protecting its neutrality in times of war, and merely thought it desirable that the States affected should be notified of the decisions taken. It would be hard to find in the note any grounds of principle for the United States concept of a three-mile limit. Indeed, the note had reserved the ultimate extent of the territorial sea for future deliberation, and in 1848 an agreement concluded between the United States and Mexico had recognized a territorial sea of nine miles for the latter country.

26. With regard to official opinion on the subject in the United Kingdom, he drew attention to Lord Salisbury's statement, during a debate in the House of Lords in 1895 on the meaning of the three-mile limit established in 1878, that great care had been taken not to name three miles as the territorial limit: the limit depended on the distance to which a cannon-shot could go.[6] The range of a cannon-shot at that time had been approximately twelve miles.

27. Those two opinions could not be regarded as statements of an absolute rule of law, for individual States might lay down different boundaries within the limits of cannon range. Nor could such an alleged rule be held to be binding on any State, least of all on the newly independent States. Most of the latter countries were in favour of broader limits, and it would be wrong to deny them a right which was vested in all sovereign States.

28. His delegation endorsed the conclusions reached by the International Law Commission that international practice concerning the delimitation of the territorial sea was not uniform, that international law did not permit an extension of the territorial sea beyond twelve miles, and that the establishment by a State of a territorial sea between three and twelve miles did not constitute a violation of international law. It might be argued that his delegation's interpretation was based partly also on the commentary to the Commission's report; however, as the Commission's practice was to adopt by vote every passage in its report, including the commentary, it was clear that the majority of the Commission had concurred in that interpretation, which was both realistic and in conformity with existing international law.

29. He referred to the proposal submitted by the Yugoslav delegation to the first Conference,[7] under which the right of every coastal State to establish the breadth of its territorial sea between three and twelve miles by unilateral action would have been recognized. The proposal had been based on the principle of the sovereign equality of States and on their right to decide, in the light of political, economic and geographical conditions, whether and to what extent that power should be exercised. In his delegation's opinion, recent scientific developments in no way reduced the importance of the breadth of the territorial sea in the defence system of coastal States.

30. He did not agree that the breadth of the territorial sea endangered the freedom of navigation of ships flying foreign flags: such ships could not navigate more freely in the territorial waters of States with a three mile limit than in broader territorial waters. That was clearly shown by current legal practice with regard to the innocent passage of merchant ships through territorial waters and by the provisions of the Convention on the Territorial Sea and the Contiguous Zone adopted at the 1958 Conference. The rule of international law concerning innocent passage was fundamental, and would continue to be observed whether or not the 1958 Convention entered into force.

31. Nor had he been convinced by the argument that a broader territorial sea would impose heavy costs upon the coastal State. Such States were fully aware of their duty to ensure the safety of shipping in the territorial sea. In any case, in establishing the breadth of the territorial sea, the coastal State would inevitably take into account their political and economic needs, on the one hand, and their financial capacities, on the other.

32. With regard to the argument that an extension of the territorial sea would adversely affect the freedom of passage by civil aircraft, he referred to the Convention on International Civil Aviation which adequately guaranteed freedom of aerial navigation. Besides, the question did not arise in practice, since all States were either members of the International Civil Aviation Organization (ICAO) or had settled the question by means of bilateral agreements, over 1,300 of which had been registered with ICAO between 1944 and 1958.

33. One objection which might legitimately be raised related to the unnecessary presence in peacetime of warships and military aircraft near the coasts of foreign States. The presence of such vessels and aircraft should be reduced to a minimum, in order to protect the peoples of coastal States from fear of pressure and threat of armed force.

34. Those considerations had led the Yugoslav delegation to the conviction that the Conference could achieve success by proclaiming as a general rule of international law the right of each State to determine the breadth of its territorial sea between three and twelve miles. There was no doubt that if such a rule were laid down, many States would not take the maximum provided for, and would either maintain their existing limits or would establish them at less than twelve miles. The principle of the equality of States should also be maintained in

[5] See Christopher B. V. Meyer, *The Extent of Jurisdiction in Coastal Waters* (Leyden, A. W. Sijthoff, 1937), pp. 71-72.

[6] *Ibid.*, p. 133.

[7] *Official Records of the United Nations Conference on the Law of the Sea*, vol. III, annexes, document A/CONF.13/C.1/L.135.

the economic sphere, with regard to the exploitation of the living resources of the sea. Accordingly, the breadth of the zone of exclusive fishing rights should be established and the Conference should lay down a uniform maximum breadth for that zone, independently of the breadth established for the territorial sea. The deliberations of both Conferences had shown that it was essential to many States, especially to economically under-developed countries, that the fishing zone should be established within the limit of twelve miles from the baseline from which the territorial sea was measured.

35. So far as fisheries were concerned, the Conference should be equally realistic. The fishing fleets of the under-developed countries consisted of small vessels not equipped for distant-water fishing. By contrast, the fishing fleets of the industrialized countries were equipped for fishing on the high seas and had no need to enter the territorial waters of other States.

36. He was glad to note that all the proposals submitted to the Conference acknowledged the economic value for the coastal States of the exploitation of the living resources of the sea in a zone of twelve miles measured from the baseline of the territorial sea. Some of them, however, confused two concepts — that of the conservation of fishing resources and that of their exploitation. In that connexion, the United States proposal (A/CONF.19/C.1/L.3) deserved examination.

37. At the previous Conference, the United States delegation had supported the Canadian proposal concerning the exclusive fishing rights of nationals of the coastal State up to a distance of twelve nautical miles from the baseline of the territorial sea [8] and had subsequently submitted a proposal along the same lines.[9] Unfortunately, there had been later inserted a clause concerning the alleged fishing rights of vessels of foreign States which had made a practice of fishing in that zone. The United States delegation considered that the text submitted to the present Conference was an improvement on its earlier proposal in that it restricted the catch of the vessels in question by reference to the catch in a specified base period. Any increase in the resources would thus benefit the coastal State. Under those conditions, however, not only would the coastal State be the sole loser by any impoverishment of the stocks of fish, but it was doubtful whether the restriction could be enforced in practice, and control measures would be very costly for the coastal State.

38. There was no doubt that trawlers, which fished unceasingly, would fish from the time they left their port to the time they reached the zone with exclusive fishing rights, and again possibly in the territorial sea of the coastal State when they called at the coastal State's port for the inspection of their catch. In the opinion of the Yugoslav delegation, there would be no way to determine the kinds and quantities of fish which had been taken by the foreign fishers in their own national waters, in the high seas and in foreign seas, nor any way to separate such fish from those taken from the zone where the coastal State had exclusive fishing rights.

39. Further, by maintaining the fishing rights of other States in the zone of exclusive fishing rights of the coastal State, the United States proposal set up between that State and the fishing State a kind of condominium in the zone in question. It thereby diminished the rights of the coastal State recognized by the Convention on Fishing and Conservation of the Living Resources of the High Seas, which empowered the coastal State to order conservation measures and, in article 7, paragraph 3, required the fishing vessels of the foreign State to respect such measures pending the settlement of the dispute by arbitration.

40. The latest United States proposal would authorize foreign vessels to disregard the rules of the coastal State in such a case and to continue their fishing activity until the question was settled. Moreover, the body competent to decide the matter would be an international judicial organ, even though the zone in question was one in which the coastal State had the same sovereign right with regard to fishing as in its territorial sea. In other words, the fishing State would be exercising sovereign rights in waters under the control of another State, and its mere claims would have greater legal force than an order made by the coastal State. The Yugoslav delegation could not share the United States view, but, if the United States concept were adopted, it acknowledged that a fishing State might have the right to initiate legal action but not that it should have authority to continue its activities pending settlement of the dispute by arbitration.

41. The Yugoslav delegation, without distinguishing between the kind of fishing carried out since time immemorial and that practised during the five years preceding 1958, regarded the affirmation of so-called historic rights as an effort to uphold the theory of acquired rights. It was evident from the circumstances in which those rights had come into being that in most cases they represented vestiges of colonialism or an abuse of power by politically or economically stronger States. It would be contrary to the spirit of the Charter to deprive States of their national resources on the pretext that they had had to give them up when they had been unable to exploit them themselves. Some feared a decrease in the world production of fish for human consumption, but that was a field in which United Nations assistance to the under-developed countries could produce excellent results. Experience had shown that coastal States could in a short time and at moderate cost be rendered capable of fully exploiting their coastal waters.

42. He reviewed the arguments advanced at the 2nd meeting by the Cuban representative, who would grant preferential fishing rights to the coastal State and " historic " rights to other States. Admittedly, that representative accepted the possible exclusion of foreign fishermen if necessary for the conservation of biological resources. That could not be considered a concession to the coastal State, however, since it already had the right to exclude foreign fishermen from the high seas adjacent to its waters under article 7 of the Convention on Fishing and Conservation of the Living Resources of the High Seas. Moreover, the Cuban representative would grant foreign fishermen a preferential fishing right if those of the coastal State were not sufficiently active. The Yugoslav delegation opposed that argument, which would condemn the under-developed countries to permanent

[8] *Ibid.*, document A/CONF.13/C.1/L.77/Rev.1.

[9] *Ibid.*, document A/CONF.13/C.1/L.140.

economic inferiority, and which was inconsistent not only with the purposes of the Charter and with the sovereign equality of States but also with the policy of the United Nations to promote the political and economic advancement of the under-developed countries. The grant of " historic " rights to foreign fishermen and the reduction of exclusive fishing rights to perferential rights would be a permanent source of disputes between States. It would be preferable by far to encourage States to enter into bilateral or regional fishing agreements, negotiated voluntarily and on a footing of equality.

43. In view of the foregoing considerations, the Yugoslav delegation would vote against all the proposals which would deny to coastal States exclusive fishing rights within a radius of twelve miles measured from the baseline of the territorial sea. On the other hand, his delegation was ready to co-operate with other delegations in the search for an acceptable solution which would be both realistic and lasting.

The meeting rose at 1.10 p.m.

NINTH MEETING

Wednesday, 30 March 1960, at 3.20 p.m.

Chairman: Mr. José A. CORREA (Ecuador)

Consideration of the questions of the breadth of the territorial sea and fishery limits in accordance with resolution 1307 (XIII) adopted by the General Assembly on 10 December 1958 *(continued)*

GENERAL DEBATE *(continued)*

Statements by Mr. Nogueira (Portugal), Mr. Okumura (Japan) and Mr. Pfeiffer (Federal Republic of Germany)

1. Mr. NOGUEIRA (Portugal) said that although at the first United Nations Conference on the Law of the Sea, his delegation had voted for the United States proposal [1] as opening the door to a possible compromise, it had seen no legal reason for considering the three-mile rule as dead; no more did it see such reason at the present time. Much had been said about the shortcomings of that rule and its inadequacy under present-day conditions, but such gloomy prognostications had, perhaps, not been properly tested against the statistical evidence. In fact, the synoptical table in the Secretary-General's note on the breadth and juridical status of the territorial sea and adjacent zones (A/CONF.19/4) showed plainly that out of the seventy-one States listed therein no less than twenty-two expressly accepted the three-mile rule and that in addition there were other States, like his own, which adhered to that rule though there was no specific provision on the subject in their municipal legislation. To those who claimed that the three-mile rule was obsolescent and would shortly fall into complete oblivion, he would point out that it had been expressly confirmed within the last decade by five countries, and that three countries which had gained their independence after the Second World War had held to it. Moreover, generally speaking, the three-mile limit was still applied as a supplementary rule for the delimitation of the territorial sea where no specific legislation existed. A distinction had to be maintained between the principle itself and the concept on which it might originally have been based. Incontestably, the validity of the principle could no longer be defended by reference to the criterion of the range of a cannon, but the principle was viable because new circumstances gave it new life. If the community of nations as a whole was to derive the maximum benefit from the freedom of the high seas, the territorial sea must be kept as narrow as possible, which was why the Portuguese delegation was in favour of embodying the three-mile rule in the multilateral convention which it was the Conference's task to prepare.

2. The International Law Commission had been unable to define, or even propose, a legal rule for the delimitation of the territorial sea. In article 3, paragraph 1, of the draft rules adopted at its eighth session,[2] the Commission had made a statement of fact which in no way implied recognition of the existence of different rules of law of equal validity. In paragraph 3 of the same article, the Commission stated that it had not itself taken a decision as to the breadth of the territorial sea up to a limit of twelve miles, and in paragraph 4 that that breadth should be fixed by an international conference. Its view could be summarized as follows: that within the range of state practice fixing the territorial sea between three and twelve miles it could not propose a rule, and that limits beyond twelve miles were not admissible in international law. In other words, the Commission had gone no farther than an impartial reader of the synoptical table would go. That interpretation of the Commission's position had been confirmed by one of its members, the Brazilian representative, at the previous meeting.

3. The breadth of the territorial sea had been fixed unilaterally by some countries between a minimum limit of three and a maximum limit of twelve miles. He left aside claims to a wider belt, since they were regarded by the Commission as not conforming with international law. The synoptical table showed that four countries had adopted a four-mile limit; one country (newly independent) a five-mile limit; ten countries (including three newly independent) a six-mile limit; one country a nine-mile limit; one country a ten-mile limit and thirteen countries (including only two newly independent) a twelve-mile limit. Thus, of the seventy-one countries listed in the table, at least thirty-five had adopted a limit not exceeding six miles, whereas only fifteen had imposed a wider one.

4. None of the four proposals before the Committee (A/CONF.19/C.1/L.1 to L.4) prescribed a three-mile limit, though it would have been permissible for them to do so as they only sought to establish a maximum. Two of the proposals had been submitted by countries

[1] *Official Records of the United Nations Conference on the Law of the Sea,* vol. II, annexes, document A/CONF.13/L.29.

[2] See *Official Records of the General Assembly, Eleventh Session, Supplement No. 9,* chap. II.

countries adherents of the three-mile rule, doubtless with the commendable aim of making a constructive contribution to a universally acceptable solution.

5. With specific reference to those two proposals — those of the United States of America (A/CONF.19/C.1/L.3) and Canada (A/CONF.19/C.1/L.4) — he would himself prefer a uniform limit because that would fulfil three of the most important requisites of any rule of law, namely: that it should be definite, unequivocal and uniform. However, theoretical perfectionism must give way to what was practicable, and his delegation, being inclined to favour those proposals which came closest to safeguarding the concept of a narrow territorial sea, was prepared to support article 1 in either proposal, whereby the maximum breadth of the territorial sea would be fixed at six miles.

6. Turning to the problem of the fishing zone, he said that the Conference had there been entrusted with the complex task of creating a new rule of law. Such a rule must be equitable both in its general and in its specific application, and must take into account all legitimate interests which had become established and accepted within the existing legal framework.

7. Fishing in distant waters, some of which would come within the scope of the outer zone as defined both in the United States and Canadian proposals, was an important activity for his country. The legitimacy of such fishing had been fully recognized by international law, according to which the high seas were free and open to use by all nations. Such distant-water fishing had long been the practice of Portugal, among other countries, and was carried out in accordance with the relevant international rules and regulations, in good faith and without detriment to or encroachment upon the rights of any other State. Thousands of persons were engaged in such fishing, and a large fleet of suitable craft had been built up over the years. The catch represented one of the main sources of animal protein for the Portuguese people, and was entirely disposed of in the home market. To illustrate its importance, he said that during the period 1956-1958, out of 756,410 tons of yield from demersal fishing, 609,589 tons had been cod, one of his country's staple foods, caught in the north-western Atlantic Ocean. Part of that tonnage had come from waters that would fall within the fishing zone of coastal States if either the United States or the Canadian proposal were adopted. It should be added that foreign fishing craft operated in analogous waters off the Portuguese coasts.

8. Without going into the theory of the principle of *res communis*, prescriptive rights and the like, he was bound to emphasize that such practices as those he had described, constituting effective and continued usage wholly in conformity with international law, could not in justice be ignored if the concept of an outer fishing zone were to be embodied in a rule of international law. Otherwise, the outlook would be bleak indeed for the countries that engaged extensively in fishing: other work would have to be found for the fishermen, the people's feeding habits changed, craft dismantled or reconverted at great cost, all with considerable capital losses and the threat of unemployment. That did not mean of course that the special rights which coastal States might be entitled to exercise in their fishing zone should themselves be ignored. Those rights could and should be recognized alongside those of fishing States, as laid down in the United States proposal, subject of course to certain limitations that remained to be determined in the interests of all concerned.

9. There was no reason why the same kind of co-operation which had resulted in the conclusion at the 1958 Conference of the Convention on Fishing and Conservation of the Living Resources of the High Seas should not bring about agreement on a rule on the outer fishing zone. His delegation considered that the United States proposal alone approached the matter in a constructive, equitable and realistic way. Approval of that proposal would cause Portugal substantial economic loss, but his Government was none the less prepared to support it as a sensible compromise which he was confident the Conference would accept. There were no obstacles which could not be overcome given goodwill and reciprocal understanding. His delegation was prepared to make its contribution towards such a successful outcome within the framework of the concepts and principles he had outlined.

10. Mr. OKUMURA (Japan) emphasized that his delegation attached great importance to the present Conference as an opportunity, which might not soon recur, for the nations to find an equitable solution to the cardinal problems of the breadth of the territorial sea and fishery limits. The first United Nations Conference on the Law of the Sea had shown that the issue was highly controversial and could only be settled in a spirit of conciliation with the goodwill and co-operation of all those taking part. At that Conference the United Kingdom had submitted a compromise proposal [3] providing for a territorial sea six miles broad, on the understanding that if no agreement was possible on that compromise the three-mile practice would remain the recognized rule of international law. A number of other delegations, including that of Japan, had expressed their readiness to support such a proposal on the same understanding. It was therefore wrong to assert, as some representatives had done, that the three-mile rule had ceased to be a rule of international law. The Japanese Government adhered to the position it had taken at the first Conference, being convinced that a rule of international law could be changed only by means of an international agreement based on a consensus of opinion among the nations. Whatever position his delegation might take in the further discussion and voting, he could assure the Committee that it would be moved solely by a sincere desire to see an acceptable compromise agreed upon at the present Conference.

11. In his Government's view, any extension of the breadth of the territorial sea, or the creation of an exclusive fishing zone, would to that extent constitute an encroachment on the freedom of the seas, which it was the Conference's duty to uphold in the interests of all mankind. He regretted that some countries should be primarily interested in the immediate benefits to be derived from extension of their territorial waters or fishing zones, since it was more important to safeguard and promote the long-term benefits that would accrue

[3] *Official Records of the United Nations Conference on the Law of the Sea*, vol. III, annexes, document A/CONF.13/C.1/L.134.

from the free use by the international community as a whole of the widest possible area of the high seas. He refuted the argument, adduced by some delegations, that coastal States needed an extension of their territorial sea or an exclusive fishing zone for conservation purposes, on the ground that the special interests which the coastal States might claim were already adequately safeguarded by the provisions of the Convention on Fishing and Conservation of the Living Resources of the High Seas, adopted by the first Conference in 1958.

12. He was convinced that, if the present Conference failed to resolve or reduce the differences between States on the issues of the territorial sea and fishing rights, those differences would remain a major source of international friction and disputes. The Japanese delegation would therefore give serious and sympathetic consideration to any proposal based on justice and equity and put forward in a spirit of conciliation and concession. But proposals seeking to extend a coastal State's territorial sea, or the zone in which it would enjoy exclusive fishing rights, to twelve miles or beyond did not seem compatible with the principles of justice and equity if they excluded States which had for many years been fishing in the areas of the high seas affected, and whose economy and national livelihood largely depended on fishing in distant waters. Japan, the leading fishing country of the world with an annual catch of about five million tons, had a particular right to stress that point. Its people derived almost 70 per cent of their animal protein requirements from fish, the bulk of which was caught in distant waters. Moreover, his country's economy was heavily dependent on foreign trade and shipping. Thus any extension of the territorial sea or exclusive fishing zones would immediately and seriously affect Japan's economy and standards of living. Therefore, if his delegation supported any proposal which went beyond the traditional three-mile limit, it would be doing so in spite of the heavy sacrifice entailed. In such a case his country would be giving overriding consideration to the interests of mankind as a whole, and would act solely in a spirit of conciliation and concession, which he hoped would be reciprocated by other States.

13. He emphasized that the purpose of the present Conference was to establish an effective rule of law, which was essential to international peace and co-operation. The new convention must not be a mere paper agreement; it would have to be faithfully observed *in toto* and by all States. Such rights as it might confer on coastal or non-coastal States might not be set at nought or circumvented by unilateral action on any pretext whatsoever. The Conference could mark an important milestone in the history of the international community, and he appealed to all taking part in it to be unsparing in their efforts to accomplish the task set them.

14. Mr. PFEIFFER (Federal Republic of Germany) said that, his Government's attitude towards the breadth of the territorial sea and fishing limits not having changed since the first United Nations Conference on the Law of the Sea, he would merely outline the arguments adduced by the representative of the Federal Republic of Germany in the First Committee of the first Conference on 14 March and 10 April 1958.[4]

[4] *Ibid.*, vol. III, 15th and 55th meetings.

15. The Federal Republic of Germany had always upheld the principle of the freedom of the seas, and had consistently supported a breadth of three nautical miles for the territorial sea.

16. In his Government's view, the establishment of an exclusive fishing zone outside the territorial sea was an innovation which might well restrict the freedom of the seas, place the acquired rights of certain States, including the Federal Republic of Germany, in jeopardy, and entail long-term disadvantages for the international community as a whole and especially for those countries which were at present claiming an exclusive fishing zone. The argument had been put forward in favour of the establishment of such zones that both the *de jure* and the *de facto* situation had been modified by the creation of many States which were still inadequately equipped to engage in distant-water fishing, and which ought therefore to be allowed to benefit from a contiguous fishing zone in which they would be protected from all foreign competition. But it was legitimate to ask whether that argument did not overlook the temporary nature of the situation. Those new nations had both an inexhaustible demographic potential and vast natural resources. Their remarkable impetus was far from spent, and it was probable that they would soon catch up with — if indeed they did not outrun — other States which had hitherto had the advantage over them in the technical field. Rather than taking a stand on a purely temporary situation, therefore, it would be better to count on a future in which the rational exploitation of the common resources of mankind would be attended not only by equality of rights but also, and to a far greater extent than at present, by technological equality. The day was not far distant when the young States, having equipped themselves for distant-water fishing, might well find themselves baulked everywhere by the twelve-mile limit. Moreover, respect for the principles hitherto in force would in no wise prevent the Conference from taking account, as his delegation had already suggested, of the special interests of those countries whose economies were largely dependent upon fishing.

17. Such had been, and still was, the attitude of the Federal Republic of Germany. However, anxious as it was not spurn any initiative likely to promote universal agreement, his delegation was prepared to give careful consideration to any modification that might be suggested, to enable the Conference to come to a successful conclusion, provided always that any such modification did not prejudice his country's vital interests, and that any material sacrifice accepted was compensated by the moral satisfaction of having contributed to a general agreement.

18. With those considerations in mind, his delegation would support those proposals which were closest to the existing rules, would best safeguard the principle of the freedom of the seas and would take account of historical developments. Of all those so far submitted to the Conference, the United States proposal (A/CONF. 19/C.1/L.3) came closest to the ideas of the Government of the Federal Republic of Germany. It had the merit of recognizing the existence of certain acquired fishing rights — although it appreciably restricted them. In that connexion, the Committee should note the wide scope of the restrictions provided in the United States proposal, under which the coastal State, by improving

its equipment and methods, could increase the yield of its fisheries year by year. Conversely, fishing craft from distant countries, no matter how efficient their equipment, would in future be allowed to take from the zone in question only the quantities and species of fish that they had caught during the base period. That meant that the margin between the yield of national fisheries and that of foreign fishing vessels would be continually increasing to the benefit of the coastal State. The United States proposal, therefore, called for real sacrifices from those States which enjoyed acquired rights, and the resulting losses should not, as certain members of the Committee had attempted to do, be belittled. If, after some hesitation, the delegation of the Federal Republic of Germany had decided to support the United States proposal — despite its attendant drawbacks — it had done so solely as a contribution to the success of the second United Nations Conference on the Law of the Sea.

The meeting rose at 4.15 p.m.

TENTH MEETING

Thursday, 31 March 1960, at 10.45 a.m.

Chairman: Mr. José A. CORREA (Ecuador)

In the absence of the Chairman, Mr. Sörensen (Denmark), Vice-Chairman, took the Chair.

Consideration of the questions of the breadth of the territorial sea and fishery limits in accordance with resolution 1307 (XIII) adopted by the General Assembly on 10 December 1958 *(continued)*

GENERAL DEBATE *(continued)*

Statements by Mr. García Robles (Mexico), Mr. Sen (India) and Mr. Yasseen (Iraq)

1. Mr. GARCIA ROBLES (Mexico) said that the qnestion of the breadth of the territorial sea had, of course, among other aspects, a legal aspect. For more than a century influential Powers had tried to build up groundless propositions into scientific truths. It was now generally recognized that the so-called three-mile rule was dead, a " fallen idol " as Gidel had described it at the Codification Conference at The Hague in 1930; the first United Nations Conference on the Law of the Sea had so far disregarded the rule that not a single delegation had dared to press to the vote any proposal embodying it.

2. The Mexican delegation believed that a breadth of six miles for the territorial sea was equally inadequate, a view shared by many delegations. At the 1958 Conference, only two proposals providing for a territorial sea of six miles without an additional fishing zone had been put to the vote, and they had been rejected by overwhelming majorities. The reason why States did not consider the six-mile limit reasonable lay not only in fairly recent enactments, but also in older instruments. For example, between 1848 and 1908 Mexico had concluded no fewer than thirteen bilateral treaties in which its territorial sea had been recognized as measuring three leagues or nine nautical miles (in seven treaties), or twenty kilometres (in six treaties). Five of those treaties were still in force, two with the United States of America and those with Guatemala, Ecuador and the Dominican Republic.[1]

3. Article V of the first Treaty between the United States of America and Mexico dated 2 February 1848 stipulated that " the boundary line between the two republics shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande ", and similar terms were used in article I of the second Treaty with the United States (1853) and in article III of the Treaty with Guatemala (1882). The Treaties with Germany (1882), with the Kingdom of Sweden and Norway (1885) and Great Britain (1888) contained identical stipulation that " the two Contracting Parties agree to consider as the limit of maritime jurisdiction on their coasts the distance of three sea leagues, reckoned from low-water mark ". The Treaties with France (1886), Ecuador (1888), the Dominican Republic (1890), El Salvador (1893), Holland (1897) and Honduras (1908) also included almost identical wording, by which the Contracting Parties agreed " to consider as limit of the territorial jurisdiction on their respective coasts " or " the limit of their jurisdiction in the territorial waters adjacent to their respective coast " the distance of twenty kilometres, reckoned from low-water mark. It was worth noting that all those treaties were considerably ahead of their time in referring to the territorial sea as it was understood in modern times, for all of them beyond doubt fully recognized the sovereignty of the coastal State over the territorial sea. From the evidence, it was clear that Mexico had a good historic title to a territorial sea of nine nautical miles — the limit laid down in legislation enacted in 1935 — and that no formula limiting the breadth of the territorial sea to six miles could be acceptable to the Mexican delegation.

4. The Mexican delegation was still convinced that the flexible proposal which it had co-sponsored at the 1958 Conference, recognizing the right of every State to fix the breadth of its territorial sea at a maximum of twelve nautical miles,[2] was most likely to achieve the Conference's aims, for it was the only one yet offered that accurately reflected reality, as embodied in the existing laws and regulations of coastal States, and consequently the only one holding out any prospect that a freely accepted agreement might be reached, either at the present Conference or at a later one. The formula satisfied the legitimate claims of the coastal States without detriment to interests which the maritime and fishing Powers might legitimately wish to protect on the grounds of law, justice and equity. The synoptical table prepared by the Secretariat (A/CONF.19/4) on a proposal

[1] For extracts from those treaties see Alfonso García Robles, *La Conferencia de Ginebra y la anchura del mar territorial* (Mexico City, 1959). See also *Laws and Regulations on the Régime of the Territorial Sea* (United Nations publication, Sales No.: 1957.V.2), pp. 745-777, *passim.*

[2] *Official Records of the United Nations Conference on the Law of the Sea*, vol. III, annexes, document A/CONF.13/C.1/L.79.

by the delegation of Mexico [3] showed that about three-quarters of all the coastal States had already enacted, or had announced the intention of enacting, legislation fixing the breadth of the territorial sea at more than three miles and, in most cases, between six and twelve miles. The interests of the maritime and fishing Powers were fully safeguarded by the provisions on innocent passage in the Convention on the Territorial Sea and the Contiguous Zone adopted in 1958, and the freedom of aerial navigation over that sea was likewise appropriately regulated by the Convention on International Civil Aviation signed at Chicago in 1944.

5. Of course, the provisions of the Convention on the Territorial Sea and the Contiguous Zone might be deliberately violated by some State, but that was no argument for reducing the breadth of the territorial sea. After all, if that breadth were fixed by an international instrument approved by the present Conference, that instrument would have no greater binding force in law than the 1958 Convention by which innocent passage was guaranteed. Two opinions were possible: either that both instruments would be duly observed by the States parties to them, in which case it could not be argued that a territorial sea of twelve miles would hamper freedom of navigation; or else that both might conceivably be infringed, in which event it would be futile to try to fix the breadth of the territorial sea in an international instrument and to have drawn up the four Conventions adopted at the 1958 Conference.

6. In view of the foregoing, he said the argument that a twelve-mile limit would hamper the freedoms of maritime and air navigation was groundless. He referred to paragraphs 2, 3 and 4 of the commentary on the Mexican proposal (A/CONF.19/C.1/L.2). The proposal was in fact intended to allay such apprehensions. It embodied three new ideas which were, in the Mexican delegation's opinion, an advance on those embodied in all the relevant proposals submitted to the 1958 Conference.

7. The key to the Mexican proposal was the idea expressed in the commentary on article 1 of the proposal. In addition, the proposal outlines a procedure which might induce a number of States to fix the breadth of their territorial sea at not more than six miles. The element of compensation had been introduced, as explained in paragraph 4 of the commentary. The most appropriate form of compensation would be to establish a zone with exclusive fishing rights of a breadth inversely proportionate to the breadth of the territorial sea. For example, a State which fixed the maximum breadth of its territorial sea at six miles would be given an additional fishing zone measuring twelve miles; a State with a territorial sea of nine miles would be entitled to an additional fishing zone of six miles, while a State with a territorial sea of ten or eleven miles would have a fishing zone not extending beyond the twelve-mile line. A State with a territorial sea of twelve miles would not have any additional fishing zone.

8. The limit of eighteen miles for the fishing zone, the utmost contemplated in his delegation's proposal, had been chosen both because it seemed most reasonable for the purpose and because there had been a valuable precedent at the 1930 Codification Conference, where it had been defended on several counts. The most succinct defence had been the reply of Portugal to the questionnaire prepared by the Preparatory Committee of that Conference:

> " The determination of a single uniform breadth for all purposes should be such as to satisfy all the various necessities of States; the extent of territorial waters cannot accordingly be fixed at less than eighteen miles.... Should this limit of eighteen miles not appear likely at present to secure the acceptance of all States, it would be essential to adopt a breadth which would vary for each special purpose. Among these special purposes, fishing and the question of giving States exclusive fishing rights in their territorial waters are matters of vital importance for various populations which depend on this industry for an essential part of their food supplies and their livelihood; for these populations, fishing is sometimes the most productive and reliable occupation." [4]

9. The second new feature in the Mexican proposal was embodied in its article 2, paragraph 2, inserted with a view to obtaining the greatest possible degree of stability in matters relating to the breadth of the territorial sea; that provision naturally in no way impaired the inalienable right of the coastal State to determine the breadth of its territorial sea within the limits recognized by international law.

10. The third innovation was embodied in article 3 of the Mexican proposal and was explained in paragraph 6 of the commentary. Mexico had itself set an example by the promulgation of a decree on 22 February 1960, which established a special coastguard and inspection service to see to it that fishing by craft registered in Mexico restricted their fishing in the Mexican territorial sea adjacent to the territorial sea of other countries. Fishing in foreign waters was expressly declared to be subject to the permission of the foreign State concerned. The idea embodied in article 3 was not, therefore, merely academic, but had been put into practice by Mexico and could certainly be put into practice by other countries, thus preventing the fishing disputes which had been all too frequent in recent years. While the Mexican delegation regarded its proposal as constructive, it would be perfectly prepared to consider amendments, except to the basic principle laid down in article 1, paragraph 1.

11. The fundamental object of the Conference was to codify international rules governing the breadth of the territorial sea and fishery limits. If the Conference was to succeed, the freely given assent of all, or of at least the great majority, of the States represented was necessary. At the 1958 Conference, the Convention on the Territorial Sea and the Contiguous Zone had been adopted by 61 votes to none and the Convention on the High Seas by 65 votes to none. That had been a hopeful augury. The essential prerequisite was that the international instrument be based on the actual international situation and practice with regard to the delimitation of the territorial sea, with scrupulous respect for the principle of the sovereign equality of States before the law. The reality was that about three-quarters of coastal

[3] *Ibid.*, vol. III, 14th meeting.

[4] League of Nations publication, 1929.V.2, p. 31.

States had already fixed, or had announced the intention of fixing, a territorial sea broader than three miles, and in most cases ranging between six and twelve miles.

12. It had been suggested that the States whose fleets carried almost all the world's maritime transport should be asked why they opposed the extension of the breadth of the territorial sea to twelve miles. He could not see what would be the point in putting such a question. Gidel had given the answer when he had stated that a dominant factor in the dispute was the inequality of sea power; the greater a State's sea power, the more it would tend to limit the breadth of its territorial sea, for it had no need to look to international law for means to exercise special powers over a broad zone of sea adjacent to its coasts. Unfortunately, the maritime Powers, which were usually also fishing Powers, were not confining themselves to exercising special powers in the areas of sea adjacent to their coasts, but were only too often attempting to exercise them in the territorial sea of other countries too. To condone such behaviour would be a flagrant injustice and would impair the legitimate rights of the immense majority of States which were known as coastal States. Such a situation might have been explicable, although not justifiable, in past ages when a few Powers had exerted a prevailing influence on the formulation of the rules of international law. It was totally unacceptable in the twentieth century.

13. Furthermore, the United Nations was based on the principle of the sovereign equality of all its Members, and that same principle was the basis of the Organization of American States, as was stated clearly in article 6 of the Charter signed at Bogotá in 1948.

14. Hence, if a formula fixing the breadth of the territorial sea and fishery limits was to be acceptable to all States at the Conference, it must satisfy not only the wishes of those which owned large merchant and fishing fleets, but also the rights and legitimate claims and wishes of the new countries and the countries in the process of development, which relied on their maritime resources for the purpose of raising their peoples' levels of living.

15. The coastal State's sovereign rights in the territorial sea were essentially analogous to those exercised in its land domain, including of course the right to the exclusive use and ownership of natural resources. That was why the question of the breadth of the territorial sea was so important, and why a solution such as that suggested in the flexible formula of three to twelve miles would simultaneously solve the problem of fishery limits.

16. The coastal State could not reasonably be expected to surrender an inalienable right in exchange for illusory concessions; it must be given concessions of a real value. The Mexican delegation believed that only such compensation could induce any considerable number of States which had not yet broadened their territorial sea not to waive the right to fix that breadth up to twelve miles, but to abstain voluntarily from making use of it, for some time at least.

17. The maritime Powers should reflect carefully before lightly refusing the conciliatory and constructive effort represented by the Mexican proposal. They should reflect that, if the Conference failed, it would be impossible to revive a flexible formula of three to twelve miles in a few years' time, for the practice of the great majority of States would by then have imposed a uniform twelve-mile formula. Had not the head of the United States delegation himself said, before the Senate Foreign Relations Committee in January 1960, that if agreement was not reached at the Conference the individual practice of States might, in time, tend to establish a territorial sea twelve miles in breadth. In view of what had happened at The Hague Conference in 1930 and at the 1958 Conference, and in view of the fact that in the two years which had elapsed since then four more States had fixed the breadth of their territorial sea at twelve miles, the only conclusion to be drawn was that the success or failure of the second Conference would depend ultimately on the willingness of the maritime and fishing Powers to adopt a realistic attitude and to read the lessons of history aright.

18. Mr. SEN (India) said that, notwithstanding its failure to reach a decision on the breadth of the territorial sea and fishery limits, the 1958 Conference had achieved remarkable success, if one took into account the wide range of its activities. Although the work of the present Conference covered a narrower field, its task was much more difficult, and he agreed with the United Kingdom delegation that the complex problem could not be solved merely by formulating a neat provision of law.

19. At the 1958 Conference India had co-sponsored a proposal [5] under which the coastal State could fix the breadth of the territorial sea between three and twelve miles. When it had become apparent that neither that formula nor the three-mile rule would command a two-thirds majority, the delegation of India had supported the proposals for a six-mile territorial sea with a six-mile fishing zone, in the hope that agreement could be reached, but agreement had unfortunately not materialized. Since 1958 there had been a gradual polarization of opinion towards either a six-mile or a twelve-mile limit, and the three-mile rule had been forgotten. Consequently, in his opinion, the choice now lay between a breadth of six miles and a breadth of twelve miles.

20. The problem had been defined as one of shared competence and shared use. The question was how much must be shared and how much regulated exclusively by the coastal State. On the one hand, it was essential for shipping that the high seas should be open to all; on the other, the aspirations of the smaller countries, which wanted a twelve-mile limit for purposes of exploitation and security, could not be ignored. The supporters of a twelve-mile territorial sea formed a representative cross-section of countries from different regions with different political structures, but it was not a mere accident that among them the younger States predominated. Their past history and their passionate craving for a better life explained their eagerness to keep for themselves as far as possible the seas adjacent to their coast. They were not equipped for fishing in distant waters where they would have to compete with the more developed countries; and they considered, rightly or wrongly, that a wider territorial sea would shield them from the interference of the great Powers.

[5] *Official Records of the United Nations Conference on the Law of the Sea*, vol. III, annexes, document A/CONF.13/C.1/L.79.

21. The delegation of India welcomed the general acceptance of the idea, contained in the proposals of the United States (A/CONF.19/C.1/L.3) and Canada (A/CONF.19/C.1/L.4), of a contiguous fishing zone in which the coastal State would exercise exclusive rights. Such a zone would be of the utmost importance for the newer and economically less-developed countries, many of which did not produce enough food. The seas were an inexhaustible reservoir of good food and protein, and those countries should have the exclusive right to the fish in that zone, immune from the competition of better equipped States. India was not unmindful of, or indifferent to, the hardships which might be caused to some countries by the immediate application of the Canadian proposal, and it was ready to consider measures which would alleviate those hardships and allow time for adjustment. It believed, however, that ultimately the acceptance of an exclusive fishing zone of twelve miles measured from the baseline would be in the universal interest and would eliminate the cause of quarrels. It considered that bilateral or multilateral agreements could be negotiated to settle some of the problems that would arise.

22. The United States proposal concerning " historic " rights would, however, meet with insuperable difficulties in practice. It would mean that reliable data would have to be collected from all over the world concerning the quantity of the catch and intensity of fishing, not only within the six-mile to twelve-mile zone, but also in the three-mile to six-mile zone. There were no separate figures for those two zones, and most of the smaller countries had no statistics at all. Even the data relating to the waters adjacent to Canada and Iceland, for example, were insufficient. It would be impossible, in the absence of adequate data, to adjudicate in the case of disputes.

23. He said it had become obvious that it could no longer be contended that international law did not recognize a territorial sea wider than three miles. The real question was whether the territorial sea should be six miles or twelve miles. In time of peace, the right of innocent passage for merchant ships through territorial waters was recognized by international law, and hence the argument of the United States delegation concerning the difficulties of navigation if a twelve-mile limit were adopted was hardly cogent, inasmuch as existing navigational facilities would still be available to ships, whether the territorial sea was six miles or twelve miles broad.

24. For purposes of security, the breadth of the territorial sea was immaterial in time of actual hostilities. It was in situations short of war that the breadth was important to coastal States. Some countries seemed to fear that if they were at war they might have difficulties in the waters of neutral States with a twelve-mile territorial sea. Surely, however, the interests of coastal States in peace-time took precedence over the interests of non-coastal States in time of war. The domination of smaller countries by great Powers was still a vivid reality. Small countries were fearful of any encroachment by land or sea, particularly of the prolonged sojourn of foreign warships in their adjacent waters, and were anxious for that reason to lay down a limit of twelve miles for the territorial sea. It would not help the cause of codification of international law if that genuine apprehension on the part of small countries was ignored. India itself had a six-mile territorial sea, but his delegation did not think that there was much prospect of success for the Conference unless those countries which had command of the high seas made further concessions in the matter of the outer zone of six miles contiguous to the territorial sea, which should itself measure six miles.

25. Mr. YASSEEN (Iraq) said that for the purpose of determining the breadth of the territorial sea one had to inquire into the rules of existing positive law.

26. Unlike those who defended the so-called three-mile rule, his delegation did not think there was any general rule of international law on the subject. That was the conclusion reached by Gidel and other eminent jurists. But even if the so-called three-mile rule had existed, it did not now exist. It had never been embodied in a general convention, and, moreover, it could not be said to be based on custom, since custom implied continuity; it ceased to be a rule of law and became obsolescent solely because it was not continuously applied. Many of the States which had taken part in The Hague Conference of 1930, and nearly two-thirds of those which had attended the 1958 Conference, did not recognize the rule in question.

27. Therefore, while the principle of a territorial sea was undeniable, it was evident that the extent of that sea was not determined by any general rule of international law. That state of affairs was not unique; for example, there was the principle of the application of foreign laws — the basis of private international law — and the principle that each State had to grant an irreducible minimum of rights to aliens. Those two principles were undeniable, but the extent to which they could be applied had not been determined.

28. Nevertheless, the situation was not anarchical; and, although difficult, it was possible to put such principles into effect and to determine their scope in the light of the reasons for their existence and the inherent diversity of the social elements involved.

29. The principle of the territorial sea was a case in point. In the absence of a higher authority or of a general convention, the State, as the unfettered judge of its security and vital interests, fixed the extent of the territorial sea unilaterally. That was the unchallengeable right of the State, so long as it observed reasonable limits. The fact was that recognition had been won for a maximum limit of twelve nautical miles, beyond which a State could not extend its territorial sea.

30. International practice had evolved a flexible formula which should be confirmed. In so far as it was argued that the result of such a formula would be diversity and disorder, his answer would be that diversity already existed, and that in any case the territorial sea could not be governed by a hard-and-fast rule. Economic, geographical and strategic conditions differed from country to country. As the representative of Brazil had said at the 8th meeting, no two seas were alike. A breadth which was regarded as necessary in one case might be inadequate or excessive in another. Uniformity had the merit of simplicity, but it might also have the disadvantage of over-simplification.

31. It had been said that the practice of allowing the territorial sea to be extended up to a limit of twelve miles would seriously prejudice the freedom of the seas. He disagreed. Provided that the right of innocent passage in the territorial sea was guaranteed, freedom of navigation would be fully safeguarded. Moreover, the Iraqi delegation believed that mankind was waiting impatiently for the day when, even on the high seas, only innocent passage would be allowed.

32. Referring to the subject of fishing zones, he said that the idea of an exclusive fishing zone, though new, was neither illogical nor incompatible with the principles of international law, especially if the zone did not exceed the limit up to which a State could extend its territorial sea. On that point, however, the general debate had disclosed differences of opinion, which were attributable to economic factors and which should not be forgotten when looking for a general rule. The paramount consideration was that, by virtue of geographical position alone, the coastal State enjoyed certain privileges — and nothing could be more natural.

33. In view of the foregoing, the delegation of Iraq considered that the international practice whereby each State was free to fix, within a limit of twelve nautical miles, the extent of its territorial sea, was perfectly acceptable, for the practice was in keeping with the concept of the territorial sea and in no way incompatible with the principle of the freedom of the seas.

The meeting rose at 1 p.m.

ELEVENTH MEETING

Thursday, 31 March 1960, at 3 p.m.

Chairman: Mr. José A. CORREA (Ecuador)

In the absence of the Chairman, Mr. Sörensen (Denmark), Vice-Chairman, took the Chair.

Consideration of the questions of the breadth of the territorial sea and fishery limits in accordance with resolution 1307 (XIII) adopted by the General Assembly on 10 December 1958 *(continued)*

GENERAL DEBATE *(continued)*

Statements by Mr. Chacón Pazos (Guatemala), Mr. Gudmundur i Gudmundsson (Iceland), Sir Kenneth Bailey (Australia), Sir Gerald Fitzmaurice (United Kingdom) and Mr. Gundersen (Norway)

1. Mr. CHACON PAZOS (Guatemala) said that the success of the first United Nations Conference on the Law of the Sea in adopting a number of excellent international instruments in 1958, and the fact that it had been possible to convene the present Conference within two years of the previous one, provided grounds for hope that the present Conference would successfully accomplish its task.

2. The unilateral measures adopted by many States with regard to the breadth of the territorial sea had introduced a measure of anarchy into a subject which, by its very nature, should be governed by uniform rules of international law. The Guatemalan delegation believed that all States realized the desirability of providing for the delimitation of the territorial sea in such a way as to safeguard both the sovereign rights of States and the freedom of the seas, at the same time facilitating maritime and air communications throughout the world.

3. All the views expressed both in 1958 and at the present Conference deserved equal consideration, for they were all based on sound arguments and served legitimate interests. But it was clear that a generally acceptable solution could be arrived at only if the various States were prepared to make sacrifices and to agree to a compromise formula. He realized that it was often difficult for national public opinion to reconcile itself to an international settlement that seemed to restrict rights governed by national legislation, or to curtail interests protected by that legislation; but the establishment of a rule of international law on the breadth of the territorial sea was so important that it was worth while accepting changes in regard to each country's position in order to attain it. His delegation believed that the presence at the present Conference of practically all the nations of the world was a sign that there was a general desire to complete the work on the law of the sea begun by the first Conference in 1958. The formulation of rules on the breadth of the territorial sea and fishing limits would complete the effective codification of the international law of the sea for the first time in the history of mankind. But if the present Conference failed, the present confusion, which was inimical to peaceful understanding among nations, would be perpetuated, if not, indeed, worse confounded.

4. Guatemala was among the countries which had fixed the breadth of its territorial sea at twelve miles. But its position was neither inflexible nor intransigent: it was prepared to support any compromise proposal capable of reconciling the different points of view, provided compromise enjoyed general acceptance and that it did not modify, explicity or implicity, the rules already agreed to under the 1958 Convention on the Territorial Sea and the Contiguous Zone.

5. His country favoured the establishment of a contiguous zone of exclusive fishing rights in favour of the coastal State, because it regarded the living resources of the adjacent sea as pertaining to the economy of the nearest coastal State, particularly where they were essential to that State for its economic development and the improvement of the living standards of its people. The fact that, precisely because they were not yet sufficiently developed economically, some countries had so far been unable to utilize those resources on a large scale was not a valid argument for depriving them indefinitely of the possibility of doing so.

6. His delegation believed that the rules to be formulated on the breadth of the territorial sea and fishing limits should apply equally to all States, and should not be subject to derogation in special cases. The solution to fisheries problems that did not affect all States in like manner should be sought in bilateral or regional agree-

ments in which adequate provision could be made to meet the specific features of each particular problem.

7. Until explicit rules of international law on the breadth of the territorial sea and fishing limits had been adopted, Guatemala reserved its right to maintain its existing legislation, which fixed the breadth of the territorial sea at twelve miles. His delegation earnestly hoped that all the States represented at the Conference would make the necessary concessions to enable a generally acceptable formula to be worked out and agreed upon.

8. Lastly, without wishing to launch a controversy and in a spirit devoid of all hostility, he pointed out that the Government of Guatemala could not accept the reference in an official document of the Conference (A/CONF. 19/4) to the Guatemalan territory of Belize as a possession of the United Kingdom under the name of " British Honduras ", and asked that his delegation's reservations in that regard be placed on record.

9. Mr. GUDMUNDUR I GUDMUNDSSON (Iceland) recalled that more than ten years had elapsed since the General Assembly of the United Nations had initiated the efforts to clarify and develop the international law of the sea. The Icelandic delegation had from the outset urged that the various questions relating to the régime of the territorial sea and to that of the high seas be treated as a whole, and not piecemeal. That view had fortunately prevailed.

10. The first United Nations Conference on the Law of the Sea had been a great success in so far as it had settled a great many problems of that law. The foundation for that admirable structure was, however, still missing, and the almost total lack of ratifications of the 1958 Conventions was to be attributed to the fact that the extent of coastal jurisdiction remained undefined both with regard to the territorial sea and to fisheries.

11. The views of the Icelandic Government on the extent of coastal jurisdiction had met with great understanding throughout the world, and the Icelandic people was grateful for the goodwill thus shown towards it.

12. In the first place, his Government recognized that the freedom of the seas was one of the corner-stones of international law; a reasonable extent of coastal jurisdiction did not, however, encroach upon that freedom. Internatinal law had recognized for centuries that the coastal State was entitled to exercise sovereignty over its coastal waters and that the concept of the freedom of the seas applied in the vast sea area beyond those waters — in other words, on the high seas. The concept of coastal jurisdiction and the concept of the freedom of the seas were of equal value: neither could be advanced as an argument for unduly limiting the other. The problem was where to draw the line.

13. In the second place, his Government considered that a distinction should be made between the territorial sea and fisheries jurisdiction — a distinction that lay at the root of Icelandic legislation in the matter. The concept of the territorial sea implied full sovereignty, which might well, in view of the freedom of the seas and of international air traffic, be limited to a relatively narrow area. A more extensive jurisdiction was required to safeguard fishing interests, but there was no reason why the territorial sea itself should be extended for the purpose. The obvious remedy was the exercise of adequate coastal jurisdiction over fisheries.

14. There had in the past been two fundamentally different approaches to the extent of such jurisdiction. Some States, wishing to safeguard the rights of their nationals to fish as close as possible to the coasts of other countries, had maintained that coastal jurisdiction should be very limited. That policy had for long been practised by some of the great naval Powers. In recent times, however, as the grave problem of overfishing had become more and more acute, the coastal States, whose main preoccupation was the threatened depletion of their coastal fishery resources, had objected to that policy. The standard reply to their objections had been that the proper remedy was for all the nations concerned to agree upon proper conservation measures equally applicable to all. That argument was fallacious. As the intensity of modern fishing had grown, it had become increasingly evident that conservation measures to ensure a maximum sustainable yield could not solve the coastal State's problems, because even the maximum sustainable yield was often too small to satisfy the demands of all those who were fishing in a given coastal area.

15. He proceeded to take Iceland as an example. Supposing that it was found necessary at a given time, for purposes of conservation, to reduce the current catch in Icelandic waters by, say, 25 per cent, the effect of that measure, if applied equally to the nationals of all the countries fishing those waters, would be very different for Iceland and for other countries. On Iceland, where fisheries formed the very basis of the economy and accounted for almost all the country's exports, the impact of such a cut would be disastrous. Fisheries being of only minor economic importance to the other countries, they would hardly notice the reduction in their catch in Icelandic waters. It was therefore clear that conservation measures equally applicable to all did not solve the problem.

16. Those considerations were leading to widespread recognition of the coastal State's priority position, a recognition which had led to the downfall of the so-called three-mile rule. Another criterion was winning increasing favour — namely, that the extent of coastal jurisdiction over fisheries should be determined in a reasonable manner by relevant local considerations, and already more than twenty-five States had found that a distance of twelve miles met their requirements in that respect.

17. The Icelandic Government believed very strongly that the Canadian proposal (A/CONF.19/C.1/L.4) for twelve miles' jurisdiction in the matter of fisheries represented a realistic approach to the problem, and therefore supported it in principle. On the other hand, it was not only unrealistic but also unjust that an exception to the principle should be made in favour of those who had been fishing a given area for a long period. In many cases, such fishing activities had been harmful to fishing stocks; indeed, they had sometimes led to their depletion. So far as they affected Iceland, they had been going on for much too long already. His country considered such " historic rights " as on a par with colonial rights, a concept that was fortunately obsolescent.

18. It had been proposed that those " historic rights " should be limited in such a way as to ensure that the total catch of foreign nationals in the outer six-mile belt did not in future exceed their catch there over a prior base period. That proposal was completely unrealistic, because there were virtually no statistics for the catch in the area between six and twelve miles offshore. Fisheries statistics always showed the catch in a given country area — for instance, in the Icelandic area; there was no break-down at all by distance from the coast. In addition, a problem of control arose: there would be a great temptation for the skipper of a trawler to maintain, when his country's quota had been reached, that his catch came from the high seas beyond the twelve-mile limit.

19. Although, therefore, his delegation was opposed to the United States proposal (A/CONF.19/C.1/L.3), it had noted the United States representative's remark that it was not intended to deal with exceptional situations in which the economy of a State was overwhelmingly dependent on its coastal fisheries, and that the United States delegation was prepared to discuss special treatment in that connexion. It was clear that the reference to exceptional cases did not apply to any other country with as much force as it applied to Iceland. In that regard, his delegation maintained, as it had done in 1958, that in exceptional cases special rules were called for beyond the general twelve-mile formula. Although the merits of the Icelandic case were generally recognized, he would give a brief account of the facts involved.

20. The Icelandic people were and had always been dependent upon coastal fisheries for their survival. The country was devoid of mineral resources and forests; agricultural activities, limited to sheep and dairy farming, were hardly sufficient to satisfy local demand. Most of the necessities of life had to be imported, and paid for by Iceland's exports, 97 per cent of which consisted of fishery products.

21. The overfishing of some important Icelandic fishing grounds had been an established scientific fact long before the Second World War, as had been demonstrated by the steady decline in the catch per unit of effort. The famous British fishery scientist, E. S. Russell, considered the stocks of haddock, plaice and halibut in Icelandic waters as typical examples of overfished populations. The decline in fish stocks between the two world wars had led to a reduction of about 80 per cent in the total catch of haddock and plaice in the area; Iceland was thus rapidly coming face to face with ruin.

22. Those developments raised an issue of life or death, for without its coastal fisheries Iceland would not be habitable. Unfortunately, the protection of fish stocks in Icelandic waters, which had been adequate in former times, had been disastrously impaired at the very time when they had been most needed. From the seventeenth century to the latter part of the nineteenth century, Iceland's fishery limits had been four leagues, the league being taken as equal, first to eight, later to six and finally to four nautical miles. In the late nineteenth century, a four-mile limit seemed to have been applied by the Danish authorities, who at the time had been responsible for Icelandic affairs, but had not administered the laws in force effectively; all bays, however, had been closed to foreign fishing during the entire period. Finally, in 1901, an agreement had been concluded between Denmark and the United Kingdom providing for a ten-mile rule in bays and for three-mile fishery limits around Iceland. That agreement had been terminated by Iceland in 1951, in accordance with its own provisions. At that time, Iceland had been faced by ruin as a result of overfishing, and the overfishing Conventions of 1937 and 1946 had provided no effective remedy.

23. In the face of such disastrous overfishing, the Icelandic Government had proposed in 1937 the closure of Faxa Bay, one of the most important nursery grounds in the North Atlantic Ocean. The International Council for the Exploration of the Sea had assembled scientific evidence strong enough to propose an international experiment entailing the closure of that bay to all kinds of trawling for a number of years, with the object of studying the effects on stocks of fish elsewhere around Iceland. In the light of those scientific recommendations, Iceland had endeavoured to convene a conference of the interested countries to secure their agreement to the proposed experiment. The conference had eventually been cancelled because the United Kingdom, by far the most important foreign country fishing in the area, had declined to attend. It had thus become clear that the Icelandic problem could not, at that stage, be solved by international agreement, and his country had been obliged to resort to unilateral measures.

24. In 1948, the Icelandic Parliament had authorized the Ministry of Fisheries to establish clearly defined zones within the limits of the continental shelf, the outlines of which roughly followed the coast, in which all fishing would be subject to Icelandic jurisdiction and control, and to issue the necessary regulations. The shallow banks of the continental shelf included some of the world's most valuable spawning grounds and nursery areas, which were the cradle of the great off-shore fisheries around Iceland. In 1950 and 1952 straight baselines had been drawn round the coast, and a fishery limit of four miles had been established to protect the nursery and spawning areas. The United Kingdom Government had then asserted that those measures were illegal and would greatly diminish the catch of British trawlers operating in Icelandic waters. That fear had subsequently proved to be unfounded, because the catch in the Icelandic area had been checked and an upward trend detected. The United Kingdom would no doubt agree that, following the adoption of those measures, its catch in Icelandic waters had increased considerably. Unfortunately, the measures taken in 1952 had soon proved inadequate, but Iceland had preferred to await the decision of the United Nations, which had then been considering the problem of the law of the sea. Neither the General Assembly in 1956, nor the first United Nations Conference on the Law of the Sea in 1958, had been able to devise a solution. Iceland had therefore decided that further delay was impossible and had issued new regulations on 1 September 1958 establishing a twelve-mile fishery limit around the entire country.

25. The Icelandic Government was firmly convinced that its regulations at present in force were not contrary to international law. The baselines drawn in 1950 and 1952 could have been further extended and still would have fallen within the provisions of article 4 of the Con-

vention on the Territorial Sea and the Contiguous Zone adopted at the first Conference in 1958. Even as a general rule, the twelve-mile limit was quite legal in the light of current state practice, since, in the absence of a binding agreement, international law was the expression of the views of the international community.

26. Nevertheless, Iceland's twelve-mile limit had been challenged by some countries which had been fishing in its waters; but with one solitary exception they had not gone beyond a diplomatic protest, and subject to that reservation their fishing vessels had respected Iceland's laws. The one exception, namely, the United Kingdom Government, had proceeded to prevent the enforcement of the twelve-mile fishery limit by despatching naval vessels inside that zone to protect British trawlers. Those vessels had even threatened to sink Icelandic patrol boats if the latter attempted to arrest the trawlers. No other State had employed such tactics, neither had the United Kingdom itself resorted to them against any other of the States that had adopted the twelve-mile limit. In other words, it had taken action exclusively against the Icelandic people, who were wholly dependent upon fisheries for their livelihood.

27. The Icelandic Government has repeatedly protested to the United Kingdom Government about such practices, demanding the immediate withdrawal of United Kingdom warships from Icelandic waters. The usual reply had been that, a twelve-mile limit constituting a violation of international law, the Icelandic Government should not have adopted it unilaterally. Apart from the fact that the United Kingdom Government had clearly not been willing to assent to the twelve-mile limit, by concluding a bilateral agreement with Iceland, more than twenty-five States had already adopted such a limit unilaterally. Surely it was impossible to maintain that all had thus violated international law.

28. The Royal Navy had now been withdrawn from Icelandic waters, at least for the duration of the Conference, and he would not dwell upon the matter further, for the Conference was not the proper forum to discuss the past.

29. The fears expressed in 1952 by some foreign trawler-owners that their catch would decrease as a result of Iceland's extension of its fisheries limits to four miles had proved utterly without foundation, and the protection of young fish had demonstrably been worth while for all concerned. The same would apply with equal force in the case of a twelve-mile limit.

30. The Icelandic Government considered that, as a general rule, a twelve-mile fishery limit should be adopted, and that an additional special rule was required to meet the exceptional cases where the local population was overwhelmingly dependent on coastal fisheries for its livelihood. Such a special rule would naturally have to be framed in such a way as to prevent abuse. The formula proposed by the Icelandic delegation to the first United Nations Conference on the Law of the Sea had received very substantial support. Although it had been argued that the problem was adequately dealt with in the resolution on special situations relating to coastal fisheries adopted in 1958,[1] that text contained a fundamental loophole inasmuch as it provided that all measures to be taken were subject to the approval and consent of those very States which were fishing in the areas concerned, and which were therefore unlikely to favour recognition of the coastal State's preferential position. The resolution was therefore likely to remain a dead letter, and his delegation intended to submit further proposals on the subject that would at least supplement, if not replace, the resolution.

31. He appealed for understanding and support for his Government's position.

32. Sir Kenneth BAILEY (Australia) said that the task of the present Conference was to define, by common accord, the limits of three of the historic freedoms which together made up the precious concept of the freedom of the sea: the freedom of navigation, the freedom of fishing and the freedom of flight over the high seas. Those freedoms were absolute in the case of the high seas, whereas in the territorial sea of coastal States they were either qualified and regulated, or non-existent except by agreement with the coastal State. All the proposals so far submitted to the Conference had the effect of limiting to a greater or lesser extent the current scope of each of those freedoms, in so far as they sought to extend the limits of the territorial sea and to vest in the coastal State, in a contiguous zone extending beyond the territorial sea, rights which it did not at present enjoy under the customary law of nations, thereby curtailing the rights hitherto enjoyed by other States in its coastal waters.

33. The first United Nations Conference on the Law of the Sea had revealed a growing recognition of the need to accord to a coastal State fuller rights in its coastal waters than international law had hitherto countenanced. While Australia, as a coastal State, shared that need, it believed that the consensus at that Conference had been in favour of according enhanced rights to the coastal State within the general framework of the freedom of the high seas, of preserving that great freedom in the common interest of mankind, and of agreeing to its curtailment or modification only to such an extent as was generally agreed to be necessary. In view of the present wise trend, in harmony with the Charter of the United Nations, towards more numerous links between member States and greater areas of common interest, it would be a tragedy if the present Conference were to increase the areas of exclusive national sovereignty in such a manner and to such an extent as substantially and seriously to impair the freedom of the sea. The proposals before the Conference sought to give the coastal States greater fishing rights, and to curtail *pro tanto* the rights hitherto enjoyed by other States, in a contiguous zone extending twelve miles to seaward of the baselines from which the breadth of the territorial sea was measured. The United States proposal (A/CONF.19/C.1/L.3) would alone allow foreign States to continue to fish in those waters up to but not beyond the average former level. Australia had no distant-water fishing interests to protect, and no other State had exercised fishing rights in its coastal waters to any substantial extent; it could therefore take an impartial view of the issue. In its opinion, the United States proposal offered, in the circumstances, the fairest possible adjustment of the claims and desires of coastal States,

[1] *Official Records of the United Nations Conference on the Law of the Sea*, vol. II, annexes, document A/CONF.13/L.56, resolution VI.

distant-water fishing States and other States. By that proposal, the coastal State would enjoy immediate exclusive fishing rights in an outer six-mile zone, subject only to the continuance of foreign fishing at the previous level, and would thus be protected against newcomers from other States.

34. The Australian delegation felt that references to " historic rights " and the concept of prescription had created confusion about the juridical nature of the rights thus preserved. Under the general law of nations, all States could fish as of right in that specified zone of the high seas, and therefore the fishing rights currently exercised by distant-water fishing had been, and were, perfectly lawful by definition, and their present validity did not depend on the duration of their exercise.

35. In that context, the Conference would have to decide whether, and how far, it was equitable to expect the distant-water fishing State to surrender its rights in that zone of the high seas in order to allow the rights of the coastal State to subsist alone. It should also be borne in mind that the distinction between coastal and distant-water fishing States was not the same as that between large and small States. No question of colonialism or anti-colonialism was involved, and the groups of States which had distant-water fishing interests they wished to preserve included small States, and some which had themselves been colonies until recently. In cases where the right to fish in the contiguous zone had not been exercised, or had been exercised only to a minor degree, its renunciation would entail no appreciable sacrifice. But where a State had carried on substantial distant-water fishing for a long time, the livelihood of whole towns and villages and substantial capital investment were involved, and it did not seem just to expect such a State to agree to leave the future of its distant-water fishing interests to the sole discretion of a coastal State. Unlike a national legislative assembly, which, by an act of legislation, could make equitable provision for any section of the community unexpectedly deprived of its livelihood, the present Conference was powerless to give effect to what it considered fair and equitable except in so far as the States represented gave their consent, since no international agreement was possible without the concurrence of the necessary minimum number of States. Considerations of history, politics, economic needs and national sentiment had to be taken into account.

36. The Australian delegation believed that justice demanded that some provision be made for the continuance of well-established distant-water fishing — although in all other respects the fishing rights of the coastal State in the outer zone would become exclusive — and would therefore support the United States proposal, which seemed to offer a fair compromise. By that proposal, distant-water fishing States would be asked, at a time when world fishing was developing rapidly, to renounce all right to expand their activities in the distant coastal waters in which their fishing industries were already firmly established. On the other hand, the coastal State would be asked to continue to meet in the outer zone the same level of competition as it had met in the past from the fleets of distant-water fishing States. Cases of inequitable limitation could properly be settled by bilateral agreement. If any one of the four proposals at present before the Conference were adopted, many of the States represented, including his own, which had not fished in the coastal waters of foreign States, would henceforth be debarred from doing so except by agreement with the coastal State or States concerned. His own Government was prepared to accept such a limitation for the sake of agreement, and hoped that all other States in a similar position would be equally ready to do so. The issue was really between the States directly concerned as coastal States and the distant-water fishing States, and if those two groups came to an agreement, the other States taking part in the Conference ought to fall in behind them.

37. Turning to the question of the breadth of the territorial sea, he pointed out that all Australia's communications crossed the sea, and that the primary object of his Government's policy was therefore to secure the maximum freedom of navigation and flight. Australia's own territorial sea had been fixed at three miles nearly a century ago by a law which was still in force. His Government had no wish to extend its own territorial sea, but was willing, as it had been at the first Conference, to adhere to a convention establishing six miles as the maximum breadth of the territorial sea. The great majority of the States represented at the present Conference were probably in the same position as Australia, inasmuch as every country which possessed a merchant navy or an international airline, or whose ports and aerodromes were visited by ships and aircraft from other States, had the same needs. Every extension of the territorial sea reduced the area of the high seas through or over which ships or aircraft might pass without leave or licence, and without possibility of interruption, thus increasing the length and cost of journeys and impeding communications between States. While his Government was willing to accept a six-mile limit to the territorial sea for the sake of agreement, it believed that a general maximum of twelve miles would involve too drastic a curtailment of the freedom of navigation on, or flight over, the sea. It could not, therefore, support the Soviet Union or Mexican proposals.

38. He refuted the contention that, because there was a right of innocent passage through the territorial sea, freedom of communication would not in fact be curtailed by an extension of the breadth of that sea to twelve miles. On the high seas, ships of all nations had an absolute and unqualified right of navigation, whereas in the territorial sea of a coastal State the right of innocent passage was qualified, since it might be suspended at the discretion of the coastal State if the latter deemed such action essential for its security. Thus the breadth of the territorial sea could not be extended without qualifying *pro tanto* the freedom of navigation.

39. The position with regard to aircraft, although similar, was more complex. The right to fly over the high seas was absolute, but there was no right of innocent passage for aircraft over the territorial sea except by permission of the State concerned. Under the Convention on International Civil Aviation, signed at Chicago in 1944, state aircraft could not fly over another State's territory (or over its territorial sea) without the second State's permission. Charter aircraft were accorded a general right of overflight, subject always to the right

of the State overflown to require landing. Scheduled air services could not even overfly without permission, and then only in accordance with specified conditions. A right of overflight, though subject to important qualifications, had been granted by an ancillary agreement of potentially universal application. However, a substantial group of States was not party to those agreements; neither could it safely be assumed that all parties to the Chicago Convention would be ready to conclude long-term agreements on reasonable terms. Thus any extension of the territorial sea would clearly have serious practical consequences for aviation.

40. The present diversity of state practice with regard to the breadth of the territorial sea could not be regarded as establishing a rule of law unless it could be asserted that a State was legally bound to recognize whatever limits, subject perhaps to some customary maximum, any other State chose to fix for the breadth of its territorial sea and the extent of its fishing rights in the waters adjacent to its coasts. In his delegation's view no such rule could be deduced from existing practice. No such rule existed by convention, and the International Court of Justice had explicitly denied its existence. The fixing of the limits of a State's territorial sea necessarily involved an act on the part of the State itself, but, as the Court had stated in the Anglo-Norwegian Fisheries Case,[2] the validity of any limits so fixed depended on recognition by other States. The Australian Government believed that international law did not at present require it to recognize whatever limit, up to twelve miles, another State might fix for its territorial sea. The International Law Commission had concluded that the rule determining the breadth of the territorial sea could only be fixed at an international conference through a convention. He refuted the claim, made in the course of the present discussions, that the Commission had recognized the right of every State to extend its territorial sea up to twelve miles. In fact, the Commission recorded in paragraph 6 of its commentary to article 3 of its draft rules on the law of the sea that such a proposition had been put to the vote and rejected.[3] Thus the Commission had been unable to take any affirmative decision on the breadth of the territorial sea. But the Australian Government earnestly hoped that the matter would be settled at the present Conference, and would do its utmost to promote agreement.

41. Sir Gerald FITZMAURICE (United Kingdom) reserved the position of the United Kingdom Government on the Guatemalan representative's remarks concerning British Honduras.

42. At a later stage, his delegation would like to have the opportunity of replying to some of the observations made by the representative of Iceland about the action taken by the United Kingdom.

43. Mr. GUNDERSEN (Norway) said that his country had a particularly important stake in the issues before the Conference because from time immemorial the Norwegian people had been largely dependent upon its manifold and far-flung maritime activities, which it had been forced to take up by geographical and climatic conditions. Norway was also confronted with the special problems created by a long — one of the longest in Europe — and exposed coast-line. Most of the population still lived along the seaboard. For obvious reasons, therefore, his country had been particularly distressed by the failure of the first United Nations Conference on the Law of the Sea to solve the crucial problems of the breadth of the territorial sea and of fishery limits. Continued legal uncertainty about them would in the long run be particularly detrimental to the interests of small States, which depended more than others on the rules of international law for the protection of their vital interests.

44. As the present Conference might be regarded as a continuation of that held in 1958, it was unnecessary to repeat arguments already familiar, and he proposed to confine himself to a few general considerations and the touchstone by which the proposals before the Conference should be tested.

45. Although the first Conference had failed to solve the controversial issues before the Committee, the margin of disagreement had been narrowed down very considerably to the question of jurisdiction over the zone between six and twelve miles from the baseline. If success were to be achieved at the present Conference it was vitally important to take that advance as the new point of departure and to seek a compromise within that narrow compass.

46. It had become abundantly clear at the first Conference that it would be impossible to obtain general agreement to any rule allowing the coastal State to extend its territorial sea or fishing zone beyond twelve miles, and equally clear that a solid majority of the States taking part had been against a maximum breadth of less than six miles for the territorial sea.

47. The task should be approached as part of the progressive development of international law and its codification in accordance with the terms of article 13 of the Charter of the United Nations. The International Law Commission had itself concluded that the breadth of the territorial sea should be determined by an international conference, confining itself so far as existing law was concerned to the negative statement in article 3, paragraph 2, of its draft rules on the law of the sea that " international law does not permit an extension of the territorial sea beyond twelve miles ".[4] In reality, the Commission had found it impossible to do more than delimit the field of uncertainty, so it remained for the Conference to discharge the essentially legislative task of removing that uncertainty by negotiating a balanced compromise between conflicting interests, taking into account geographical, economic, political and security factors.

48. Another important lesson to be learnt from the 1958 Conference was that when considering the opposing interests of coastal States and those of so-called non-coastal States, the preponderant jurisdictional interests of the former extended further out to sea in regard to fisheries than for any other purpose. Consequently a majority had supported wider maximum limits for the fishery zone than for the territorial sea. The separation

[2] *I.C.J. Reports 1951,* p. 116.

[3] *Official Records of the General Assembly, Eleventh Session, Supplement No. 9,* p. 13.

[4] *Ibid.,* p. 4.

of the two issues — the delimitation of the territorial sea and the possible creation of a fishery zone — had been maintained by the General Assembly itself in resolution 1307 (XIII).

49. Another primary consideration to be kept in mind was the form in which the rule should be cast. Clearly it ought to be simple and easy of application: the Conference must not yield to the temptation to draw up an abstruse and complicated formula capable of divergent interpretation by different parties to the agreement. Nor should any of the important issues at stake be left to the uncertain fate of future arbitration. It was for the Conference itself to arbitrate between the opposing interests, and it should not shirk that responsibility by resorting to expedients likely to put off rather than solve the problem before it. The outcome of future arbitration would, at best, depend upon vague and controversial criteria, and it was far from certain that considerations of law and equity would prevail.

50. Briefly outlining the main considerations which had determined his Government's attitude to the proposals before the Conference, he said that Norway's national interests would best be served by a narrower maximum limit for the territorial sea than six miles. A four-mile limit from the baseline had been found satisfactory, and, if the principle of the contiguous fishing zone were accepted, his Government saw no purpose in extending the present limit, for to do so would only add to its responsibilities and demand heavy new expenditure without enhancing national security. In accordance with established rules, Norway was already entitled to exercise control in order to enforce customs, fiscal and public health regulations, in a zone extending twelve miles out from its baselines, and to prevent or punish infringements of those regulations committed on land or in the territorial sea. In that regard, too, experience did not suggest that a wider territorial sea would be an advantage.

51. He was aware that many States preferred a much wider limit for their territorial sea, but, as the representative of one of the largest maritime nations in the world, he spoke with some authority in submitting that the right to free navigation would be severely hampered should, for instance, a twelve-mile limit, as claimed by many countries represented at the Conference, become the universal rule of international law. Though the right of innocent passage through the territorial sea was firmly established in international law, its exercise frequently led to uncertainty and disputes; and despite the fact that the rule was clear enough not to lend itself to widely differing interpretations, coastal States did from time to time seek to limit freedom of movement along their coasts, deploying the forces of law and order to enforce compliance.

52. The Norwegian Government believed that a territorial sea of three or four miles in width would also best serve the international community as a whole, but since it was obvious that a clear majority would not accept a figure of less than six, Norway would maintain the concession it had made during the first Conference and support that figure.

53. So far as the fishing zone was concerned, the Canadian proposal (A/CONF.19/C.1/L.4) would best meet Norway's national interests. The modern technical development of deep-sea fishing and the great and unchecked increase in trawling along the northern coasts of Norway had created new and very grave problems for his country's coastal fishermen with their long-established methods. The opportunities enjoyed by coastal fishermen to fish their traditional waters had been increasingly reduced, not because their methods were uneconomical or inefficient, but because their gear was being destroyed, or their habitual fishing grounds partly or wholly occupied by foreign trawlers. From time immemorial the coastal population in northern Norway had been entirely dependent upon fisheries, and his delegation considered that the new threat presented by growing foreign trawler fleets during the past few decades called for new rules and regulations. To meet that need a twelve-mile fishing zone would seem to be the minimum requirement. It would surely be equitable if not only his countrymen but coastal fishermen everywhere were given reasonable protection in the use of their traditional fishing grounds and gear. The high-seas fishing fleets equipped with every modern technical device would still be able to exploit marine resources along the coasts outside the twelve-mile limit and on the high seas.

54. Another strong argument in favour of the Canadian proposal was that the concept of a twelve-mile exclusive fishing zone appeared to be the only one with a chance of satisfying a sufficient number of those States whose first choice would be a maximum limit of twelve miles for all purposes.

55. The proposal would remove the uncertainty about the existing rules of international law as delimited by the International Law Commission, and took due account of the progress made in narrowing down the area of disagreement at the first Conference in 1958. It had been inspired by a common-sense approach which gave due consideration to the fact, to which he had already drawn attention, that the preponderant jurisdictional interests of the coastal State extended further out to sea for fishery purposes than for other purposes. Finally, the proposal was as simple and as easy of application as it could be. He was convinced that it was the only one capable of conciliating all the conflicting interests at play.

56. Commenting on the other proposals before the Conference, he said that the Soviet Union text (A/CONF.19/C.1/L.1) had the undeniable advantages of lucidity, unequivocalness and ease of application. However, as he had already stated, his delegation could not support a proposal allowing extensions of the territorial sea beyond six miles. Neither could it support the flexible formula put forward by the Mexican delegation (A/CONF.19/C.1/L.2), which failed to provide a solution within the margin he had mentioned at the outset of his statement — namely, between six and twelve miles. He endorsed the penetrating analysis of the United States proposal made by the representative of Yugoslavia at the 8th meeting. Apart from its weaknesses from the point of view of equity, it also lacked simplicity, and would not be easy to apply.

The meeting rose at 5.25 p.m.

TWELFTH MEETING

Friday, 1 April 1960, at 10.45 a.m.

Chairman: Mr. José A. CORREA (Ecuador)

In the absence of the Chairman, Mr. Sörensen (Denmark), Vice-Chairman, took the Chair.

Consideration of the questions of the breadth of the territorial sea and fishery limits in accordance with resolution 1307 (XIII) adopted by the General Assembly on 10 December 1958 *(continued)*

GENERAL DEBATE *(continued)*

Statements by Mr. Muhtadi (Jordan), Mr. Chhat Phlek (Cambodia), Mr. Orkomies (Finland), Mr. Ustor (Hungary) and Mr. Baig (Pakistan)

1. Mr. MUHTADI (Jordan) said that Jordan, as a staunch believer in the rule of law, was anxious to contribute to what it hoped would be the ultimate success of the Conference. The conflicting points of view expressed were undoubtedly inspired in the majority of cases by purely national interests, which was quite understandable, but, to reconcile the views of all the nations assembled there, the problems confronting them must be faced objectively and dispassionately. Until the basic issue underlying all the various views was determined, and criteria discovered for testing the validity of such views, all might be held to be equally valid in international law.

2. He suggested that the basic issue was the conflict between the principle of the freedom of the seas and the principle of the right of the coastal State to extend its sovereignty over the coastal seas. The obvious way of reconciling divergent views was to seek a compromise, but experience had shown that no compromise was likely to be reached where the vital interests of the States concerned were involved. The only feasible alternative was the choice between two evils, an accepted practice in municipal law. Two well-known principles of Islamic law were that it was better to avoid an injury than to incur a benefit, and that a lesser injury should be tolerated in order to prevent a greater injury. Although analogies between municipal law and international law were not always valid, they might apply in the present case, since only by some such approach could the deadlock be broken. Consequently, where a coastal State laid claim to an extension of its territorial sea for purposes of security, that claim should take precedence over the claims of other States to treat such waters as the high seas for purposes of fishing and trade. Even if the interests of certain States would be injured if the breadth of the territorial sea were extended, greater injury would be inflicted on coastal States if the extension were not granted. His delegation therefore favoured twelve miles as the breadth of the territorial sea and would vote accordingly.

3. Mr. CHHAT PHLEK (Cambodia) said that, with regard to the fisheries zone, it had become apparent that there was a general readiness to recognize the coastal State's right to establish an exclusive fishing zone up to a limit of twelve nautical miles from the baseline. The Cambodian delegation supported that formula, which had the merit of protecting the interests of new countries, which were not yet ready to develop their fishery resources, while at the same time not injuring those of large countries which possessed the means and experience to find almost inexhaustible fishing grounds in the high seas, sometimes at great distances from their own coasts.

4. With regard to the territorial sea, there was still a wide divergence of views. The Cambodian delegation only wished to point out that, since a great many States had already declared a breadth of twelve nautical miles or more, such States were unlikely to ratify a Convention which would oblige them to revert to a narrower breadth. Legal rules must be based on realities and not on abstract principles which were not unanimously accepted. The Cambodian delegation would accordingly support any reasonable proposal which commanded the support of the majority.

5. The Conference had met for the sole purpose of settling the two questions on its agenda. He was therefore obliged to point out that the claims formulated by another delegation to a group of islands situated in the Cambodian territorial sea, and which indisputably belonged to the Kingdom of Cambodia, were not a matter for the Conference.

6. Mr. ORKOMIES (Finland) said that in accordance with old Scandinavian rule and practice his Government applied the limit of four nautical miles for its territorial sea. Although the intention of Finland was not to widen its territorial sea, at the 1958 Conference it had declared its willingness to consider a proposal for a moderate extension of the general maximum limit, if that would help to reach agreement. It still maintained its conciliatory attitude, and, since there seemed to be no possibility of agreement without providing for a special fishing zone, it was prepared to consider proposals on that aspect also. If, as his delegation hoped, agreement was finally reached, considerable changes would ensue in fishing conditions all over the world. Measures should therefore be considered for protecting the legitimate interests of the peoples of fishing States, at least during a transition period. On the other hand, in exceptional cases where a country's economy depended almost entirely upon fishing, it would be only fair to take into account the possible hardships to which it might be exposed by any restrictive decision. The debates had clearly shown the difficulty and complexity of the problems before the Conference, and Finland sincerely hoped that a solution might be found on the basis of genuine appreciation of common interests and the widest possible acceptability.

7. Mr. USTOR (Hungary) said that, although Hungary had no sea coast, Budapest was in some ways like a maritime port, since it had a small fleet of merchant vessels navigating both on the Danube and on the seas. That narrow outled did not cover Hungary's export and import needs and it was obliged to use foreign sea ports and shipping also; but its ships had never been restricted in the exercise of their right of innocent passage. The Hungarian delegation had taken an active part in the deliberations of the 1958 Conference, which had re-

cognized, among the principles concerning the rights of land-locked States, certain rules which were closely connected with the problems before the second Conference. Such States were deeply interested in finding universally acceptable rules for the breadth of the territorial sea and contiguous fishing zones, not only because agreement on those issues would help to relax international tensions and preserve world peace, but also because those problems were of practical importance to the land-locked States.

8. Some speakers had asserted that the interests of all States, whether or not they had a sea coast, would be best served by the widest possible area of high seas and, hence, by the narrowest possible territorial sea. His delegation could not endorse that view, which failed to take into account existing circumstances, realities and international trends. It had been rightly said that throughout its history the development of international law had been influenced by the requirements of international life. Everyone attending the Conference seemed to be agreed on that principle: even the delegations which had advocated the narrowest possible territorial sea had abandoned the obsolete idea of the three-mile limit and had proposed instead a maximum limit of six miles.

9. The Hungarian delegation could not, however, share that view, since the purpose of the Conference was to achieve an agreement which would correspond to the wishes and interests of most, if not all, States. The right of States to extend their territorial sea up to twelve miles was not only maintained in legal theory, but had been firmly established in practice. The number of States which had fixed the breadth of their territorial sea at twelve miles was constantly increasing; but practice could not be ignored, particularly in view of the insistence of new States on extending their territorial sea for reasons of security and economic interest. In establishing the *lex ferenda* in international law, the *lex lata* of national legislation could not be disregarded.

10. In its adherence to the principle of the peaceful co-existence of States and in its belief that all international problems could be solved by peaceful negotiation, Hungary was convinced that a common denominator between the divergent interests of States could be found by adopting a flexible formula, complying with all reasonable requirements. Accordingly, his delegation would vote in favour of the USSR proposal (A/CONF. 19/C.1/L.1) and against all proposals refusing recognition of a twelve-mile limit.

11. Mr. BAIG (Pakistan) said that the issues before the Conference, though controversial, were neither complex nor difficult, and the differences between the States were not so formidable that they could not be resolved if approached in a spirit of compromise and with full recognition of the crucial importance of the occasion. It was a great achievement that the first United Nations Conference on the Law of the Sea had reached general agreement on 113 articles of wide scope and variety. The only two questions which remained to be settled were the breadth of the territorial waters and fishery rights. In the four apparently different proposals which had been tabled on those two issues there was common ground which, if properly discerned, could form the basis of a generally acceptable compromise formula.

12. The USSR proposal (A/CONF.19/C.1/L.1) for extending the limit of the territorial sea up to twelve miles seemed, superficially, to be backed by article 3 of the articles prepared by the International Law Commission,[1] which contained the Commission's view that international law did not permit an extension of the territorial sea beyond twelve miles. That opinion was, however, qualified, in the Commission's commentary on the article,[2] by the statement that the validity of such an extension was restricted to a State which either did not object to it, or recognized it, or was a party to a judicial or arbitral award which recognized it. The Commission had further circumscribed the scope of such extension by making it conditional on historic rights. The mere convening of the present Conference was in itself a negation of the assumption that a twelve mile territorial sea had the backing of the International Law Commission.

13. On the other hand, the International Law Commission had recognized that the rule fixing the breadth of the territorial sea at three miles had been widely applied in the past. It followed that proposals to extend the territorial waters beyond the traditional three-mile limit were in the nature of compromises over historic rights in relation to the freedom of the high seas. Of the States mentioned in the synoptic table prepared by the Secretariat (A/CONF.19/4), those which had a territorial sea of less than twelve miles exceeded by about three times those which claimed a territorial sea of twelve miles. The list was, of course, not exhaustive and it would be helpful if it could be completed by the Secretariat. Furthermore, the inclusion in the table, under fishing limits, of the power claimed by India to establish conservation zones within 100 miles was confusing and should be corrected.

14. In the English Channel, the minimum width in miles of navigable channel was seventeen miles. If the territorial sea were extended to twelve miles for a length of thirty miles there would be no high seas left, while in the Malacca Strait, for five miles between Aruah Islands and Port Swettenham, the navigable channel would be restricted to a width of one mile, and in the Aegean Sea a number of places would cease to be high seas. Such instances could be multiplied.

15. From the purely economic angle, shipping costs would go up should coastal States exercise control over vessels passing through their territorial waters, because of delay due to controls or detours to avoid controls. That would result in no benefit either to the producing or to the consuming countries of the world, least of all to the common man, who would be the chief sufferer. Perhaps such economic considerations would be less important were there some real political or security advantages for the coastal States, but none were apparent. On the contrary, the power to extend the territorial sea involved concurrent political and security responsibilities and obligations which the majority of States might find it extremely difficult and expensive to undertake. The consequent navigational difficulties had been vividly described by the leader of the United States delegation at the 4th meeting.

[1] *Official Records of the General Assembly, Eleventh Session, Supplement No. 9*, p. 4.

[2] *Ibid.*, pp. 12-13.

16. The delegation of Pakistan believed that leaving the delimitation of the territorial sea flexible between three and twelve miles would hardly contribute to international uniformity; the only uniformity which could result from such a decision would be the gradual extension of the territorial sea to a limit of twelve miles, with all its adverse effects on navigation.

17. The first part of the Mexican proposal (A/CONF. 19/C.1/L.2) was similar to that of the USSR and the foregoing arguments applied to it equally. The second part was an ingenious scheme providing for a larger fishing zone in compensation for a correspondingly smaller territorial sea. It suggested that if the breadth of the territorial sea were from three to six miles, the fishing zone might be extended up to eighteen miles. The proposal, cleverly designed to persuade States to content themselves with the minimum territorial sea in exchange for extended fishing rights, had the disadvantage that it would contribute not to uniformity but to the lack of it.

18. The United States proposal (A/CONF.19/C.1/L.3) had the merit that it sought a compromise between the aims of the States which asked for a twelve-mile territorial sea and those which would prefer a three-mile territorial sea, between the aspirations of large maritime fishing States and new States in the process of developing their fishing resources.

19. The Canadian proposal (A/CONF.19/C.1/L.4) recognized the paramount interest of the coastal State in the living resources of its adjacent fishing zone, while the consideration behind the United States proposal was that those maritime States which had built up large fishing fleets should have qualified historic fishing rights reserved for them. It appeared that Canada's main objection to the United States proposal was that it sought to protect, with some limitations, the historic rights of fishing States in perpetuity. That objection had, indeed, much force, but before existing rights were extinguished by legislation a period of time was normally allowed for the affected party to make necessary adjustments. A compromise might perhaps be reached between the United States and Canadian proposals if the historic rights which the United States proposal sought to safeguard could be limited over a period of time ranging from five to ten years. Within that period of time, the large maritime fishing States could devote their attention to locating new fishing grounds on the high seas and gradually moving out of existing fishing grounds situated within the outer six-mile fishing belt. Such a proposal would, in the view of his delegation, be reasonable and fair, because many fishing States had, by means of large fishing fleets and comprehensive surveys, discovered fishing grounds which were open also to the coastal States. If the fishing States had not surveyed the waters of coastal States, some coastal States with meagre and undeveloped resources would perhaps never have discovered those rich fishing zones for years to come. In consideration of the expenditure incurred and the efforts made by the fishing States, therefore, the coastal States might gracefully permit the fishing States which claimed historic rights a reasonable time in which to quit the outer six-mile zone. The delegation of Pakistan had no strong views as to whether such historic rights should be safeguarded by law or by bilateral or multilateral agreements.

20. The annex to the United States proposal provided for machinery for arbitration, and the effective arbitral procedure already accepted in the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas might, *mutatis mutandis*, be made applicable in the context of the United States proposal.

21. The delegation of Pakistan retained an open mind on the whole question, and was most anxious that a fair agreement should be achieved in order to put an end, once and for all, to the existing uncertainty and lack of uniformity. It believed that the proposal most likely to secure general acceptance was a six-mile territorial sea with a further six-mile fishing zone, and it would support that proposal.

The meeting rose at 11.55 a.m.

THIRTEENTH MEETING

Monday, 4 April 1960, at 10.50 a.m.

Chairman: Mr. José A. CORREA (Ecuador)

Tributes to the memory of H. M. Tuanku Sir Abdul Rahman, Yang Di-Pertuan Agong, of the Federation of Malaya, and to the memory of H. M. Norodom Suramarit, King of Cambodia

On the proposal of the Chairman, the members of the Committee observed a minute of silence in tribute to the memory of the King of the Federation of Malaya and the King of Cambodia.

1. Sir Gerald FITZMAURICE (United Kingdom) wished to tender to the delegation of Malaya the sincere and heartfelt sympathies of the United Kingdom delegation in the loss of so distinguished and venerable a leader. The late King of the Federation of Malaya had taken a prominent part in the negotiations which had led up to Malayan independence, and in the drafting of the Malayan Constitution, under which he had become the first Head of the new State. His dedicated endeavours had earned the respect of the world at large, and his death would be grievously felt in his own country, where his name would be long remembered. As a member of the Commonwealth, the United Kingdom would be one with the Malayan people in their sorrow. The leader of the United Kingdom delegation, who was temporarily absent from Geneva, would wish to be personally associated with that expression of sympathy.

2. Mr. GROS (France) emphasized that the ties linking Cambodia and France were of very long standing; the French people and Government could not therefore be unmoved by the grievous blow that had befallen the Cambodian people. In a reign of only five years, the late King of Cambodia, who had felt the deepest concern for social integration, unity and religious development in his country, had sought to unite the different sections of the population around the throne — an endeavour which he had brought to a most successful conclusion.

Mr. Gros also recalled the part played by the Cambodian delegation to the Conference which was held at Geneva in 1954 with the object of restoring peace over a large area of Asia. It was his sad duty to convey to the Cambodian delegation the sincere sympathy of the French Government and people.

3. Mr. SUFFIAN BIN HASHIM (Federation of Malaya) said that the members of his delegation had been deeply touched by the sympathy expressed by the Committee and the United Kingdom delegation. The late King had become the first Head of State of the Federation of Malaya in accordance with the decision taken in 1957 to set up a constitutional monarchy. His experience, understanding and adaptability had fitted him admirably for his position as constitutional monarch and focal point for the loyalty and patriotism of all the peoples of Malaya. Mr. Suffian bin Hashim considered it a great privilege to be allowed to convey to the Malayan Government and people the expressions of sympathy voiced in the Committee on the occasion of the death of their first King.

4. Mr. JUDETH (Cambodia) thanked the Committee and the French delegation for the expressions of sympathy addressed to the Cambodian delegation, which had been deeply touched by them. In particular, it keenly appreciated the reference to His Late Majesty's endeavours in the social and religious spheres. He would not fail to transmit those expressions of sympathy to the Royal Family and to the Government of Cambodia.

Consideration of the questions of the breadth of the territorial sea and fishery limits in accordance with resolution 1307 (XIII) adopted by the General Assembly on 10 December 1958 *(continued)*

GENERAL DEBATE *(continued)*

Statements by Mr. Barnes (Liberia), Mr. Velásquez (Uruguay), Mr. de Pablo Pardo (Argentina) and Mr. Asafu-Adjaye (Ghana)

5. Mr. BARNES (Liberia) said that his delegation was attending the present Conference in the hope of securing a just agreement on the two vital issues under consideration, thereby enabling all States to enjoy in fair measure what was their common property. The hesitation and reluctance of States to ratify the four admirable Conventions adopted by the first United Nations Conference on the Law of the Sea could, in his view, be ascribed to the present uncertainty about the breadth of the territorial sea and fishery limits, and reflected the urgent need for a solution if certain of the results achieved by that Conference were not to be nullified. An essential requisite for such agreement was a spirit of conciliation, and, whatever their other merits, the Soviet Union, Mexican, United States and Canadian proposals (E/CONF.19/C.1/L.1-L.4) before the present Conference were illuminated by that spirit. Nevertheless, in delimiting the territorial sea it was imperative to uphold the salient principle that the sea was a common highway and in the common interest must be preserved as such. The delimitation of sea areas inevitably had international implications, and could not therefore be left simply to the aims of the coastal State as expressed in its municipal legislation.

6. The two proposals — those submitted by the Soviet Union and by Mexico — which sought to extend the territorial sea up to a maximum breadth of twelve miles offered an apparent advantage from the point of view of security, but that advantage could be translated into practical terms only in so far as the coastal State was capable of exercising effective control and enforcing security measures over that breadth. The coastal State would therefore have to incur additional expenditure if international incidents and misunderstandings were to be avoided. His delegation was accordingly not inclined to support any proposal fixing the maximum breadth of the territorial sea at twelve miles.

7. It had been argued that the two proposals in question would leave States free to fix the limits of their territorial sea at any distance between three and twelve miles. But that situation already existed; yet the International Law Commission had still been obliged to recognize that international practice was not uniform as regards the delimitation of the territorial sea. Having been itself unable to reach a decision in the matter, the Commission had expressed the view that the breadth of the territorial sea should be fixed by an international conference, and it was the duty of the present Conference to discharge that responsibility.

8. Although it adhered to the three-mile rule, Liberia would be prepared, for the sake of agreement, to accept an extension of the territorial sea to a maximum breadth of six miles, and would accordingly support a proposal to that effect, especially as it seemed likely to command the requisite majority. In his delegation's view, such a proposal paid due regard to the freedom of international navigation and aviation while at the same time fully meeting the needs of national security and maritime safety.

9. With regard to the question of fishery limits, careful study of the proposals before the Conference had persuaded his delegation that the Canadian proposal (A/CONF.19/C.1/L.4) satisfied one of the principal motives underlying the demand for an extension of the territorial sea — namely, the desire of the coastal State to reserve to its own nationals the exclusive right of fishing in its territorial sea. He recalled that the question of exclusive fishing rights in the contiguous zone had been raised at the first Conference as a possible compromise, in deference to those coastal States which had urged an extension of the territorial sea to twelve miles on economic grounds. Hence, provided that the coastal State was allowed the same exclusive fishing rights in the contiguous zone as it enjoyed in its territorial sea, it should be possible to reach agreement on a reasonably narrow territorial sea. But although, for those reasons, it favoured the Canadian proposal, the Liberian delegation was ready to give serious and sympathetic consideration to a formula which would provide for a reasonable period of adjustment between the coastal States and distant-water fishing States concerned. Some measure of agreement between those States, or at least a majority of them, was, however, essential before such a formula could be considered with any hope of success.

10. The fact that a second United Nations Conference on the Law of the Sea had been convened to consider further the questions of the breadth of the territorial sea and fishery limits, despite the experiences and results of the Codification Conference held at The Hague in 1930 and the first United Nations Conference on the Law of the Sea in 1958, showed that States were determined not only to reach agreement on those two important international issues, but also to improve international relations and thereby maintain world order and peace. His delegation would therefore spare no effort or sacrifice to secure agreement on a matter which had been at issue for the past thirty years.

11. Mr. VELAZQUEZ (Uruguay) said that the concept of an adjacent sea subject to the sovereignty of the coastal State antedated by some five centuries that of the freedom of the seas, which, although proclaimed for the first time in the sixteenth century by the Spanish jurist Vitoria, had not become an accepted rule of international law until the late seventeenth century. The concept of the high seas thus had appeared in history as a limitation of the jurisdiction which States had previously exercised to protect their legitimate interests in the sea areas adjacent to their coasts, a jurisdiction consistent with the principle of effectiveness — a principle fundamental to international law. Coastal States were undoubtedly in a position to exercise sovereign rights over their territorial sea.

12. Until its obsolescence had become apparent at the Codification Conference at The Hague in 1930, the old three-mile rule had had the merit of providing a uniform formula and hence an element of security and order. It had, in fact, survived for some time as the definition of the minimum breadth of the territorial sea. But the discussions and voting at the first United Nations Conference on the Law of the Sea, and the statements and proposals at the present Conference, left no doubt that the majority of States now considered that the minimum breadth of the territorial sea could not be less than six miles.

13. All States were entitled to seek, by every means authorized by international law, to enlarge their territorial jurisdiction by extending the territorial sea and thus helping to improve their peoples' economic conditions. That legitimate end was perfectly consistent with the interests of the international community. For those reasons, his delegation believed that every State should be the sole judge of its needs in respect of the breadth of its territorial sea, up to a distance of twelve miles, and he recalled that his country had been one of the sponsors of the decision on the territorial sea adopted at the Third Meeting of the Inter-American Council of Jurists at Mexico City in 1956, which read as follows:

> " Each State is competent to establish its territorial waters within reasonable limits, taking into account geographical, geological and biological factors, as well as the economic needs of its population, and its security and defence." [1]

14. The crux of the problem was to determine, in the absence of any rule of international law on the subject, what were " reasonable limits ". In the first place, he felt there would be general acceptance of the principle that international law did not permit an extension of the territorial sea beyond twelve miles, as found by the International Law Commission, a principle that was borne out by the terms of article 24, paragraph 2, of the 1958 Convention on the Territorial Sea and the Contiguous Zone, which stated that " The contiguous zone " — which was part of the high seas — " may not extend beyond twelve miles from the baseline from which the breadth of the territorial sea is measured. " The difficulty was that of determining the limit of the territorial sea within that maximum of twelve miles. The fact that, as the International Law Commission had recognized, international practice was not uniform in the matter, meant that there was no relevant rule of international law; for uniformity was an essential ingredient of any rule of customary international law.

15. In the absence, therefore, of a rule prohibiting the extension of the territorial sea up to a distance of not more than twelve miles, and in the absence of any limitation of the sovereign right of States in that respect by the Charter of the United Nations or by any other general international instrument of a binding character, there could be no valid reason for denying the coastal State its right to establish the breadth of the territorial sea by unilateral action.

16. One of the main objections raised to the recognition of that right rested on the freedom of the high seas. Freedom of navigation on the high seas was no doubt one of the basic principles of international law, but it was already adequately safeguarded by the right of innocent passage, which, long recognized by customary international law, had finally been formally proclaimed in the 1958 Convention on the Territorial Sea and the Contiguous Zone. The extension by a few miles of the breadth of the territorial sea would in no way detract from it.

17. The practical objections that had been raised to an extension of the territorial sea up to a distance of twelve miles were not universally valid, since conditions varied from continent to continent. Thus, for example, the objection based on the limited range of lighthouses did not apply to South America, where, as a survey carried out by his delegation showed, the average range of 288 lighthouses was 13.2 nautical miles; moreover, the average for each country or territory in the region, with the exception of French Guiana and Surinam, was appreciably greater than twelve miles.

18. For those reasons, his delegation regarded the proposal to recognize the right of each State to fix the breadth of the territorial sea up to a limit of twelve nautical miles as the best formula. He recalled that that formula had had its origin in a Uruguay proposal made at the Second Meeting of Ministers of Foreign Affairs of the American States held at Havana in 1940. That proposal had been submitted by the Ministers of Foreign Affairs to the Inter-American Neutrality Committee, which had adopted it in a recommendation on 8 August 1941, with the United States representative dissenting. The text of that recommendation read:

> " The sovereignty of each State extends, along the respective maritime coasts, to a distance of 12 miles

[1] See *Final Act of the Third Meeting of the Inter-American Council of Jurists, Mexico City, 17 January - 4 February 1956* (Washington, D.C., Pan-American Union, 1956), p. 36.

counted from low-water mark on the mainland or on the shore of islands which form part of the national territory." [2]

The Inter-American Neutrality Committee, giving its reasons for making the recommendation, had stated that it had come to the conclusion:

"... that it would be desirable to adopt, as a definitive rule of sovereignty over territorial waters, the maritime area between the coasts and a line 12 miles from shore." [3]

19. With regard to the question of fishery limits, there appeared to be no divergence of view about their extent or about the nature of the coastal States' rights therein. All the proposals before the Committee recognized in principle the exclusive fishing rights of the coastal State up to a distance of twelve miles. The only difference of opinion concerned so-called "historic rights". In that respect, he agreed with the arguments put forward by the representative of Canada at the 5th meeting, in demonstration of the fact that the recognition of a permanent exception in perpetuity for the benefit of the very limited number of States which claimed such "historic rights" would be inconsistent with the principle of the sovereign equality of States. He himself wished to add two supporting arguments. First, the recognition of "historic rights" would prejudice precisely those States which until 1953 had abstained from adopting unilateral measures, although they had had the undisputed right to do so, in the hope that an agreed solution of a general character would materialize; Uruguay was one such State. Second, it was difficult to see how the activities of private enterprise, which did not always operate through the same persons and did not represent any public authority, could be deemed to confer rights on the flag State in sea areas subject to the sovereignty or exclusive jurisdiction of another State.

20. He had so far considered the two questions before the Committee in the light of the interests of States. He now wished to deal briefly with a more general aspect. Although the Conference had met for the purpose of formulating rules of a legal nature, it should bear in mind that it also had important political objectives, objectives which were essential to the peace and security of the international community. Nations participating in the Conference should therefore be prepared to sacrifice their more extreme positions for the sake of producing an instrument likely to gain general acceptance. For its part, his delegation was prepared, in the interests of general harmony, to agree to solutions which fell short of what it regarded as the optimum, provided that such a compromise could be engineered without placing any vital interest in jeopardy.

21. Mr. DE PABLO PARDO (Argentina) said that, although the Conference was called upon to examine the problem of the breadth of the territorial sea and that of fishery limits together, each could and should be settled separately; the territorial sea and the contiguous fisheries zone were subject to different régimes and did not involve jurisdiction of the same scope.

22. As long ago as 1918, the eminent Argentine jurist and economist, José León Suárez, had urged that the question of the regulation of maritime hunting and fishing be dissociated from that of the régime of the territorial sea, and that, whatever the extent of that sea, the coastal State should be empowered to legislate for conservation purposes, and to control fishing activities over a wider area — preferably the whole of the superjacent waters of its continental shelf.

23. With regard to the territorial sea, Argentina had admitted, both at inter-American meetings and at the first United Nations Conference on the Law of the Sea, the right of States to extend their territorial sea beyond three miles, a distance that was still in force in Argentina under the Civil Code. That position was consistent with a trend which had become apparent throughout the world even before the Codification Conference of 1930, and which had recently been confirmed by the United Kingdom in its agreement with Denmark regarding the Faroe Islands. The Argentine delegation was prepared to consider with sympathy proposals submitted on the subject, and hoped that one of them would be adopted by the Conference.

24. The question of fishery limits was of the greatest importance to Argentina with its extensive continental shelf, which was one of the most extensive in the world. As was well known, the superjacent waters of a continental shelf were particularly favourable to the development of marine life. The continental shelf of Argentina was no exception, and utilization of the living resources of the superjacent waters was being intensively developed. The rate of development was likely to increase with technical advances and with the growth of the country's population. His delegation believed that if the Conference found itself unable to settle the question of fishery limits with due regard for the particular economic and geographical conditions of the various countries, serious international conflicts and disputes would be inescapable in the future.

25. His delegation was particularly concerned about the general tendency at the Conference to consider that fishery limits should be set at a maximum distance of twelve miles from the coast.

26. In his delegation's opinion, the coastal State should enjoy preferential fishing rights in the waters adjacent to its territorial waters even beyond an exclusive fishing zone fixed on a purely numerical basis devoid of all scientific foundation. Such rights should include the right of the coastal State to regulate fishing, and preferential fishing rights for its nationals. He felt certain that none of the States represented at the Conference wished to claim exclusive fishing rights in vast expanses of the high seas; but no one could deny them the preferential right to control and regulate fisheries in their adjacent seas, particularly as the coastal State's special interest had been recognized in international law. He drew attention to article 6, paragraph 1, of the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas, which provided that:

"A coastal State has a special interest in the maintenance of the productivity of the living resources in any area of the high seas adjacent to its territorial sea."

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[2] *American Journal of International Law, Supplement*, vol. 36, 1942, p. 19.

[3] *Ibid.*

27. The exercise of the coastal State's control was a matter of interest not only to that State but also to the international community at large, as it would facilitate the application of the conservation measures under the 1958 Convention just quoted. His delegation believed, however, that the provisions of that Convention were inadequate to safeguard the coastal State's preferential fishing rights in its adjacent waters.

28. The coastal State's fisheries jurisdiction over the high seas adjacent to its territorial sea was based on two closely related factors, one geographical, the other economic. The geographical factor was that of contiguity. He recalled in that connexion that the concept of the territorial sea, that of the contiguous zone and that of the continental shelf were all based on the geographical phenomenon of continuity. The International Law Commission had stated, for example, with reference to the coastal State's rights over the continental shelf:

> " Neither is it possible to disregard the geographical phenomenon whatever the term — propinquity, contiguity, geographical continuity, appurtenance or identity — used to define the relationship between the submarine areas in question and the adjacent non-submerged land." [4]

29. As to the economic factor, the interest of the coastal State in the matter of fisheries in the adjacent waters was obvious. That interest, which had been explicitly recognized by the 1958 Conference, had been made plain in the declarations issued and in the legislative measures adopted by many States. The economic interest of the coastal State had also been recognized in all the proposals submitted to the Conference. For instance, there was general recognition of the coastal State's interest and jurisdiction in a contiguous zone in the matter of customs. There was therefore no valid reason for denying to the same coastal State a similar interest, and a similar jurisdiction, in relation to exclusive or preferential rights to fishery resources. In that connexion, Masterson's remarks were noteworthy:

> " It is submitted that the real basis for this special jurisdiction and the test of its soundness from the standpoint of international law is found in the theory of interests. The facts of life — the needs of nations — must be considered in this connexion. The state clearly must exercise jurisdiction in the waters adjacent to its coasts for the purpose of protecting its various interests." [5]

30. One of the resolutions adopted at the 1958 Conference had referred to the " situation of countries or territories whose people are overwhelmingly dependent upon coastal fisheries for their livelihood or economic development ".[6] In the opinion of the Argentine delegation, the coastal fisheries belonged to the coastal State and constituted an important element of its economy, whatever the degree of dependence upon those fisheries.

31. Nevertheless, his delegation appreciated the special position of those countries which for many years had been engaged in fishing a long way from their own coasts, where such activity was vital to the economy of the countries concerned. The Conference could, as an exception, recognize that special position if the activities in question had gone on uninterruptedly for a long time, and provided that a time-limit was laid down for the exercise of the rights thus recognized, naturally with due regard for the unemployment and loss of invested capital which might result from their sudden termination.

32. His delegation also wished to draw attention to the importance of bilateral agreements in the settlement of specific questions connected with the law of the sea; he was happy to mention in that connexion the agreement between Chile and Argentina concerning navigation in jurisdictional waters, concluded only a few days after the settlement of border questions affecting the two countries.

33. Lastly, his delegation hoped that the Conference would succeed in devising rules for the determination of the extent of the territorial seas with due regard for the interests of navigation, and in laying down fishery limits in such a way as to recognize the natural rights of the coastal State in the fishing grounds of the adjacent seas.

34. Mr. ASAFU-ADJAYE (Ghana) said that the achievements of the first United Nations Conference on the Law of the Sea had been considerable. He hoped that its work would now be brought to a successful conclusion by the elaboration of a formula that would bring about uniformity in state practice and strike an equitable balance between divergent interests. The blind pursuit of national interests without regard for those of others would not lead to a solution, which above all called for a willingness to compromise; that was the spirit in which his delegation was participating at the present Conference. A rule of any kind would be preferable to the present chaotic state of the law.

35. The various proposals before the Conference could be reconciled by adopting a maximum permissible limit for the territorial sea and fisheries zone within the range of state practice, which the International Law Commission had recognized as being diverse. While sympathizing with the genuine national needs that had prompted the proposals submitted by Mexico (A/CONF.19/C.1/L.2) and the Soviet Union (A/CONF.19/C.1/L.1), the fate of similar proposals at the last Conference, allowing delimitations of the territorial sea up to twelve miles, suggested that they would not provide an adequate basis for agreement. He made that point despite Ghana's own preference for a twelve-mile limit, which it would favour in default of any other agreement.

36. Bearing in mind the need for a generally acceptable solution, his delegation had carefully weighed the proposals submitted by Canada (A/CONF.19/C.1/L.4) and the United States (A/CONF.19/C.1/L.3). The essential difference between the two was that the former provided for an exclusive fishery zone of six miles for all time beyond the maximum permissible breadth of six miles for the territorial sea, whereas the latter provided for an outer zone that would be permanently non-exclusive.

[4] See paragraph 8 of the commentary on article 68 of the articles concerning the law of the sea. *Official Records of the General Assembly, Eleventh Session, Supplement No. 9*, p. 43.

[5] William E. Masterson, *Jurisdiction in Marginal Seas, with Special Reference to Smuggling* (New York, The Macmillan Company, 1929), p. 381.

[6] *Official Records of the United Nations Conference on the Law of the Sea*, vol. II, annexes, document A/CONF.13/L.56, resolution VI.

37. The case of countries with large numbers of their people dependent upon distant-water fishing for their livelihood deserved consideration, and it was impossible to remain insensible to the economic and human hardship which the complete exclusion of such countries would cause. On the other hand, his delegation appreciated the coastal State's anxiety to preserve its offshore fisheries. In contrast to the proposal it had put forward at the first Conference,[7] the United States delegation was now seeking to meet the legitimate needs of coastal States by imposing a limit on the extent to which non-coastal States entitled by reason of past practice to fish in the outer six-mile zone could continue to do so. Two criticisms might be levelled against that proposal. First, it should have placed a time-limit on the right to fish acquired by a fishing practice of five years' standing. That historic right could not be based on prescription, and the principle of perpetuity was therefore inapplicable. The time-limit should be regarded as providing a period for readjustment that would enable the fishing State to find other fishing grounds, or to adapt its economy to minimize the economic loss to its population. It should also give the coastal State enough time to develop its fishing potential in such a way that, once it had acquired exclusive rights over its fishing zone, it would be able to exercise them in a manner designed to secure the maximum sustainable yield to the greatest benefit of those members of its population for whom fish formed the staple item of diet.

38. The second weakness of the United States proposal was that it failed to protect the coastal State against depletion of the stock or stocks of fish in the outer zone. The principle of conservation had already been recognized in the Convention on Fishing and Conservation of the Living Resources of the High Seas adopted in 1958: surely that principle was equally valid in respect of the outer zone, given that the primary interest of the coastal State was involved in both cases.

39. On those two counts the United States proposal failed to safeguard the coastal State's legitimate needs.

40. Furthermore, he urged that where, during any period, the need for conservation was scientifically demonstrated, the non-coastal State should be obliged to enter into an agreement with the coastal State or States for purposes of initiating the necessary conservation measures. If no agreement could be reached, the coastal State, or any of the States concerned, should be at liberty to refer the matter to the expert commission envisaged in the new United States proposal. That commission should be empowered to determine not only whether the situation was ripe for conservation measures, but also the nature of the measures to be taken. It should also have power to decide whether the non-coastal State could continue to fish, and to what extent, pending final decision. He hoped there would be overwhelming support for the proposal that the proper method of settling disputes was by recourse to an expert and impartial body: only thus could the interests at stake be effectively protected and peace maintained.

41. While supporting a twelve-mile limit, his delegation might table a compromise proposal with a view to reaching agreement, should necessity arise. The Conference must not fail in its task of reconciling equitably the interests of both coastal and non-coastal States, thereby furthering international harmony.

The meeting rose at 12.30 p.m.

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[7] *Ibid.*, document A/CONF.13/L.29.

FOURTEENTH MEETING

Monday, 4 April 1960, at 3.15 p.m.

Chairman: Mr. José A. CORREA (Ecuador)

Consideration of the questions of the breadth of the territorial sea and fishery limits in accordance with resolution 1307 (XIII) adopted by the General Assembly on 10 December 1958 *(continued)*

General debate *(continued)*

Statements by Mr. Cuadros Quiroga (Bolivia), Mr. Erkin (Turkey), Mr. Subardjo (Indonesia) and Mr. Melo Lecaros (Chile)

1. Mr. CUADROS QUIROGA (Bolivia) said it was generally agreed that the first United Nations Conference on the Law of the Sea had been a success and had made considerable progress towards the codification of international maritime law. None of the four proposals submitted at the second Conference regarding the breadth of the territorial sea and the contiguous zone (A/CONF.19/C.1/L.1-L.4) appeared likely, however, to be able to muster the required two-thirds majority. Each country, not unnaturally, wished to preserve what it conceived to be its own interests and was supporting its position with weighty historical arguments. It was however, becoming clear that, eventually, for the sake of international harmony, a compromise would have to be worked out reconciling the divergent national interests. In effect, what was needed for the purpose of the progressive development of international law was the development of international relations.

2. At one time it had seemed that the two extreme schools of thought — that of the adherents of a three-mile limit and that of countries claiming 200 miles — were utterly irreconcilable. The General Assembly had wisely thought that some middle ground could be found, and it was now apparent that a majority of States was prepared to consider a twelve-mile limit, although differences remained about the status to be accorded to the outer six miles. The United States proposal (A/CONF.19/C.1/L.3) made provision for fishing rights, whereas the other proposals did not. A conflict still subsisted between the concept of sovereignty and that of historic fishing rights. The really decisive factors would be practice and the extent to which various countries were dependent on supplies of fish. Fishing on the high seas was not carried on exclusively by the fishing fleets of the more

highly developed countries; it was vital also to many smaller countries. Any abrupt suspension of such fishing would involve them in serious losses.

3. The Committee should therefore examine the proposals before it with the greatest care. The United States proposal seemed the one likely to inflict least damage, and hence might yet form the basis of a compromise. Any development of international law had to take reality into account — and reality was not static. Admittedly, the question of sovereignty was a thorny one, but an effort should be made to develop principles out of existing realities.

4. The Conference had been convened solely to decide the breadth of the territorial sea and the contiguous zone. Bolivia, although at present a land-locked country, would collaborate to the full, but the Bolivian delegation wished to make it quite clear that Bolivia would not vote for any thing or in any way that might compromise the aspirations of the Bolivian people and their indefeasible right to recever their coastal territories.

5. Mr. ERKIN (Turkey) said that his delegation was attracted by the proposals submitted by the United States (E/CONF.19/C.1/L.3) and Canada (A/CONF.19/C.1/L.4) which embodied analogous provisions concerning the breadth of the territorial sea and the establishment of a contiguous fishing zone, with a total breadth of twelve miles. While his delegation welcomed the idea of establishing such a zone and of recognizing the coastal State's exclusive fishing rights therein, it considered it important to reconcile the divergent interests of the coastal State on one hand and, on the other, the interests of States which claimed for their nationals the right to fish in the contiguous zone. Whereas the Canadian proposal made no provision for the rights of foreign fishermen, the United States proposal would enable foreign fishermen to continue their activities in the contiguous zone subject to certain conditions, though without any limitation as to duration. The Turkish delegation considered that if the exercise of that prerogative were not made subject to a time limit, the coastal State's exclusive fishing rights would become uncertain. Accordingly, his delegation thought that a reasonable transition period should be specified, say five or even ten years, on the expiry of which the right of foreign fishermen to fish in the coastal State's contiguous zone would be renegotiated and form the subject of bilateral or multilateral agreements. That method would safeguard both the principle and the interests that were involved.

6. The establishment of a transition period would naturally mean that the conditions on which the fishing vessels of foreign States could exercise their prerogatives during that period would have to be specified. Although some difficulties might arise in its application in practice, the United States proposal, under which fishing would be restricted to the same groups of species of fish and to a specified annual average quantity, embodied certain useful provisions that would curb overfishing. Besides, some guidance was provided by the international fishery agreements which stipulated a licensing system in certain cases. The licensing method would be useful in that it would help in the estimation of the average catch of fish over a specified period. Lastly, it should be laid down as a further condition that foreign fishermen would not be allowed to fish except in the customary zone.

7. With regard to the problem of enforcement, which under the United States proposal (article 4) would be the responsibility of the foreign State, he said that it was of course desirable that the fishing State should enact regulations which would ensure that its fishing vessels complied strictly with the provisions to be adopted by the Conference, and that it should notify such measures to the coastal State. There was no doubt, however, that the coastal State was in a better position to supervise the implementation both of the provisions of whatever convention was adopted and of the regulations of municipal law. Breaches of those provisions and regulations would not, of course, be within the jurisdiction of the coastal State; any fishermen guilty of such breaches would, together with their vessels, be handed over to the authorities of the State of which they were nationals. Such a division of powers seemed sufficient to avoid any conflict of jurisdiction. For the settlement of disputes a joint commission might be set up by the coastal and the foreign States, and any disputes not settled by that commission might be referred to arbitration.

8. Mr. SUBARDJO (Indonesia) said that the proposals before the Committee and the various arguments could be classified into two main groups, those advocating a uniform limit for the territorial sea and those in favour of a flexible formula. The Indonesian delegation was convinced that a uniform limit would offer no realistic solution. It was essential to try to find a formula which took into account all the factors involved. The many geographical differences in the configuration of States and important biological, economic and political considerations must be weighed in determining the breadth of the territorial sea. At the 8th meeting the Brazilian representative had rightly said that no two seas were alike; that geographical diversity might be regarded as a curse or as a blessing, but it was an inescapable fact. Attempts to set a uniform limit, such as those embodied in the proposals submitted by Canada (A/CONF.19/C.1/L.4) and the United States (A/CONF.19/C.1/L.3), were therefore unrealistic, particularly since the limit they proposed was less than that adopted by a large number of States. Accordingly, the adoption of a uniform limit of six miles would be tantamount to imposing a rule at variance with the principle of sovereignty, equality and mutual respect in international relations and international law. The Conference should adopt a formula entitling the State to fix the breadth of the territorial sea up to a certain maximum limit.

9. His Government had enacted legislation fixing the breadth of Indonesia's territorial sea at twelve miles. With a view to contributing to a compromise his delegation would, however, support any proposal that would entitle a State to fix the breadth of the territorial sea between three and twelve miles. A number of States having a limit of less than twelve miles might, even though given the opportunity of extending their territorial seas to that limit, nevertheless decline to do so.

10. The main objection to the three-to-twelve-mile formula was that it carried with it the possibility of discrimination against States which decided not to extend their territorial seas to the maximum limit vis-

à-vis those which availed themselves of that opportunity. The Indonesian delegation considered that the objection might be met by a provision drafted in the following terms:

"If a State has fixed the breadth of its territorial sea and its contiguous fishing zone at less than twelve miles it is entitled vis-à-vis any other State to exercise the same sovereign rights or exclusive fishing rights beyond its fixed limits up to the limits fixed by that other State concerned."

In that connexion, he recalled the Mexican representative's reference at the 10th meeting to thirteen bilateral treaties under which Mexico and other countries had reciprocally recognized territorial seas up to a limit of nine miles or twenty kilometres; thus, there were many precedents for the settlement of the question on the basis of reciprocity. Under his delegation's suggested provision, no State would need to sacrifice its own ideas, but would be entitled to apply reciprocity whenever it wished to do so. The three-to-twelve-mile formula as supplemented by such a provision would, he thought, provide the most realistic and equitable solution.

11. In conclusion, he said that any agreement reached on the question of territorial waters should pay due regard to such exceptional situations as that mentioned by the Philippine representative concerning his country's position as an archipelagic State. Although the status of archipelagos forming geographical and historical units was said not to have found general recognition in international law as yet, the matter could no longer be ignored, since some countries had already implemented the archipelagic principle in their municipal law.

12. Mr. MELO LECAROS (Chile) said that the Chilean position had been stated very fully at the eleventh session of the General Assembly and at the first United Nations Conference on the Law of the Sea. Chile had always based its policies on the idea that the defined rule of international law was the only solid basis which could safeguard the future of the smaller countries. Such countries wished to know exactly where they stood and to be fully aware of their rights and obligations, because only so could they have some faith in the future and promote their economic, social, political and cultural development accordingly. As an earnest of that attitude he might mention the signature, on 19 March 1960, of agreements between Chile and Argentina by which among other things, the *Beagle* incident, which had been mentioned so frequently at the first Conference, was to be submitted to arbitration. A general system of automatic arbitration had been agreed on which, it was hoped, would remove all possibilities of dispute between the two countries in the future.

13. As the Chilean delegation had said in the past, the rise and development of the law of the sea had been prompted by one single factor: interest. Political or economic interest had always prevailed in defining the law of the sea through the centuries. Grotius had not argued for the freedom of the seas simply as an intellectual concept, but to defend the interests of the Dutch East Indies Company. Selden's sole aim in refuting Grotius had been to defend England's interests.

14. Things had changed very greatly since that time. The rule of law had been extended, but it was impossible to overlook the fact that the reason for the existence of law was interest. Law had been created by man for the use of man. Hence, it was impossible to make a law of the sea without considering the interests that such legislation must defend. The present Conference, unlike the 1930 Conference at The Hague, had not been asked to codify generally accepted rules, but to legislate. That was clear from General Assembly resolution 1105 (XI) convening the first United Nations Conference on the Law of the Sea. It did not mention codification, but an examination of the law of the sea, taking account not only of the legal but also of the technical, biological, economic and political aspects of the problem. Consequently, the second Conference, as a continuation of the first, was empowered to draft a rule of law; not a rule which fitted a given historical background, but one which suited the interests to be protected. In other words, it was to be a rule for the future, which should logically be a compromise formula, taking account of each country's legitimate aspirations regarding the seas, and one which would command sufficient assent to constitute a principle of international law.

15. The Conference should not consider any results it achieved as irreversible. No branch of law had developed more rapidly in the past few years than the law of the sea. In the past fifteen years completely new concepts had been consolidated, such as that of the continental shelf. Rules for the conservation of the natural resources of the seas had been worked out, and recognition had been given not only to the special interest of coastal States in conservation measures but also to the right of such States to adopt such measures unilaterally. That development was still continuing. Hence, references had been included in the 1958 Conventions to requests for amendment. That stipulation might not be adequate, since it implied that the conventions would be in force. If, however, a convention did not come into force or failed to obtain enough signatures or ratifications within a reasonable time, there could be no amendment procedure, despite the fact that a lack of interest in the convention was obvious and consequently that it should be amended. A procedure for the revision of such instruments should be established if they did not receive sufficient ratifications or became inoperative. He was not proposing another conference on the law of the sea. Whether the present Conference succeeded or failed in its efforts to reach agreement, several years should elapse before a new effort was made, but, in any case, efforts should be continued to obtain the signature and ratification of any agreement that might be concluded at the present Conference and of the Conventions concluded in 1958, and an analysis should be made of the reasons why some States were reluctant to become parties. That work might be carried on systematically and might be entrusted to the United Nations Secretariat, which should report in due course to the General Assembly or directly to the Governments.

16. The concept of the territorial sea had arisen as a rule for defence against pirates, epidemics and smuggling, and to protect fishing. The pirates no longer scourged the coasts. Epidemics and smuggling were covered by the concept of the contiguous zone. Fishing excepted, the factors which had originated the territorial sea had disappeared, but the principle had been preserved as a

traditional legal concept applicable to areas adjacent to the coast.

17. There were two aspects of fishing: the conservation of the natural resources of the seas and fishery limits proper. With regard to conservation, the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas, although not completely satisfactory, had been a great step forward. Only the future could tell whether the Convention was adequate and really served the purposes for which it had been concluded, or whether it might have to be amended. There had remained pending, therefore, a problem closely related to the breadth of the territorial sea, that of fishery limits, which might be either an area for exclusive fishing, an area in which there were preferential fishing rights or an area where fishing was regulated and controlled. If that problem could be solved constructively and realistically, it should not be too difficult to reach agreement on the breadth of the territorial sea.

18. It was, therefore, hard to accept the idea that the agenda of the present Conference comprised two items, the territorial sea and fishery limits, since they were in fact two aspects of a single problem. They were so closely interrelated that it was virtually impossible to separate them; both must be solved together. No agreement could be reached on the breadth of the territorial sea if the problems which States were seeking to solve by extending their territorial sea were not solved by other principles of international law. It was by reason of that consideration that he had proposed during the meetings of the experts who had prepared the first Conference that a special commission be set up to deal with the problem of the conservation of the living resources of the sea, on the grounds that fishery limits were in fact a part of the question of the territorial sea. That view had been confirmed by the first Conference and by the very wording of the agenda of the present Conference. There might well be no difficulties in obtaining agreement on a narrow territorial sea if sufficient understanding was shown for the problems of fishing, which were the greatest concern of the majority of the countries represented at the Conference. He had purposely omitted to refer to other more political aspects, to which Chile could not be indifferent, but which should be mainly the concern of the countries most directly affected; nevertheless, the Conference should adopt a liberal attitude towards the legitimate aspirations of countries which did not wish their maritime resources to be diminished by foreign fishing fleets that brought them no benefit.

19. None of the proposals before the Committee entirely satisfied the Chilean delegation, which was not particularly concerned with the breadth of the territorial sea but was very much interested in fishery limits. That had been the basis of the agreements concluded in 1952 with Ecuador and Peru which had led to the establishment of the Standing Committee of the Conference for the Exploitation and Conservation of the Maritime Resources of the South Pacific,[1] with its precisely defined aims of conserving and protecting natural resources for the benefit of the countries concerned. At the 7th meeting the Peruvian representative had referred at length to that subject and had described the exceptional position of his country, which was, on the whole, similar to that of all the Latin American countries on the South Pacific. That argument had been reinforced by the views expressed by the Brazilian representative, who had emphasized the diversity of the seas. Thus, while there would be no particular difficulty in fixing a uniform limit for the breadth of the territorial sea, exceptional situations would have to be recognized so far as fishery limits were concerned. The concept of exceptional situations might seem strange, but from the very beginning of the present Conference there had been talk of historic rights, which certainly implied exceptional situations. The only difference was that historic rights were derived from a historical assumption, because to talk of a history of five years, as the United States proposal did, meant very little, whereas rights deriving from an exceptional situation were grounded on something solid — geography.

20. The Chilean delegation certainly wished the Conference success, but it did not want a success based on a vote influenced by adventitious circumstances, but a success based on the acceptance of equitable and well-grounded rules.

The meeting rose at 4.25 p.m.

FIFTEENTH MEETING

Tuesday, 5 April 1960, at 11 a.m.

Chairman: Mr. José A. CORREA (Ecuador)

Consideration of the questions of the breadth of the territorial sea and fishery limits in accordance with resolution 1307 (XIII) adopted by the General Assembly on 10 December 1958 *(continued)*

GENERAL DEBATE *(continued)*

Statements by Mr. Quentin-Baxter (New Zealand) and Sir Claude Corea (Ceylon)

1. Mr. QUENTIN-BAXTER (New Zealand) had been encouraged to note the growing understanding of the diversity of interests at stake, and a greater flexibility of approach, which augured well for a final settlement. There had been a definite tendency to look beyond rival proposals in the search for a compromise.

2. New Zealand was one of the Pacific countries that was comparatively isolated, being 1,300 miles from its nearest neighbour, Australia. Foreign fishermen did not come to fish in its waters, nor did New Zealanders undertake distant-water fishing. Accordingly, his country's problems were relatively uncomplicated compared to those of many represented at the Conference, but he had listened with careful attention to the views of Governments with special interests.

3. Like other countries in process of economic expansion, New Zealand largely depended on seaborne traffic and

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[1] See *Laws and Regulations on the Regime of the Territorial Sea* (United Nations publication, Sales No.: 1957.V.2), pp. 723 ff.

was therefore particularly anxious to see the sea lanes kept clear. At present it did not possess a large merchant navy, but in the natural course of development would probably acquire a greater share in world shipping. That would neither bring it into conflict with other countries nor lessen its own concern that the freedom of the high seas should remain inviolate.

4. His country's position was analagous to that of the average coastal State. Perhaps its coastal waters were richer than some, but not so productive as to attract foreign fishermen from far away. New Zealand would benefit from a rule extending the exclusive rights of coastal States that would not be detrimental to any other country. Greater regard for the coastal State's interest in its coastal waters must be an essential feature of any final solution. However, being extremely anxious that the present Conference should reach a general agreement, his Government was aware that some sacrifice would have to be made by subordinating national interests to the common good, just as had been done at the Conference on Antarctica. It would be impossible to ensure that the sacrifices fell equally on all countries, but the balance must not be tipped on any one side.

5. In considering the law of outer space, the United Nations was concerned to establish a concept of common property, rather than individual rights. It would be a contradictory trend if the Conference on the Law of the Sea unduly enlarged the rights of individual States against the common domain. Despite the attempt to represent the concept of the freedom of the high seas as a weapon forged by the maritime Powers against coastal States, there was now a large measure of agreement that the concept was compatible with the latter's interests. Certainly the only way of preventing the piecemeal erosion of the freedom of the high seas was the adoption of a uniform rule for the delimitation of the territorial sea and contiguous zone.

6. It would be partisan to interpret the proposals for a six-mile territorial sea, which was double the minimum distance referred to by the International Law Commission, as a partial victory in a struggle to extend the limit up to twelve miles or beyond. Compromise was necessary if the narrow path to agreement was to be found, and proposals for a twelve-mile limit offered no real compromise. The supporters of twelve-mile proposals had sought to surround them with an aura of reasonableness, by using as a springboard the International Law Commission's statement that international law does not permit an extension of the territorial sea beyond twelve miles. That was a distortion of one of the guiding principles the Conference should follow, since it could by no means be concluded from that statement that international law conferred upon States an established right unilaterally to delimit their territorial sea up to twelve miles.

7. It was difficult to assess the force of the argument that a twelve-mile limit was necessary for defence purposes. Though it was not easy to deny any State the right to take reasonable measures for its defence, any such claim must be scrutinized most carefully, not in the light of the outmoded measure of the cannon's range but in the context of the discussions on disarmament at present going on in the United Nations. It was generally acknowledged that security depended on agreement between the great Powers and on the moral authority of the United Nations which was the foremost protection of small powers. It was illusory to imagine that a territorial sea, whether three, six or twelve miles wide, would provide a protective belt against the threat of force.

8. For those reasons, New Zealand saw no advantage for itself in having a wider territorial sea. But, recognizing the desires of other States, it believed that agreement was not possible on a limiting breadth of less than six miles. The greatest danger, however, particularly for the smaller States, lay in the absence of international agreement.

9. Referring the Conference to the last four sentences in paragraph 4 of the International Law Commission's commentary on article 3 in its draft articles concerning the territorial sea,[1] he said that if a coastal State unilaterally fixed the breadth of its territorial sea within the range of three to twelve miles and another State with substantial interests in the belt of water concerned contested such a delimitation, there was at present no way in law of adjudicating between the parties. That situation encouraged States to make gestures in order to preserve their rights and was as antiquated as trial by ordeal. The Conference's primary task must therefore be to find a general rule that would close such a gap in the law.

10. Some States favouring a twelve-mile limit were prompted by economic rather than by other motives, and it was encouraging to note that a considerable number among them admitted that analogous benefits would accrue from the six-plus-six formula, and seemed willing to vote for a solution that had a chance of securing the necessary two-thirds majority.

11. The Canadian proposal submitted to the first United Nations Conference on the Law of the Sea,[2] embodying the new concept of an exclusive fishing zone, had immediately found supporters because it had satisfied many of the demands of coastal States without prejudicing the essential rights of navigation. Those same elements of an acceptable compromise were to be found in the present Canadian proposal (A/CONF.19/C.1/L.4). Many speakers who had preceded him had already dealt adequately with the difference between the right of innocent passage and the absolute and unconditional right of free navigation on the high seas. There was an even greater contrast between freedom of flight over the high seas and the limited contractual right of flight over the territorial sea, which was very complex because it was based on national security, aircraft safety and on mutual concessions by the contracting States.

12. Unlike the Canadian proposal, the United States text (A/CONF.19/C.1/L.3) gave some recognition to historic rights, which was essential if agreement was to be reached. The question was whether the sacrifice of historic rights would be a minor hardship which should be disregarded in framing a universal rule. It might be argued that, given the very diverse situations in different parts of the world, it was impossible to take account of

[1] *Official Records of the General Assembly, Eleventh Session, Supplement No. 9*, p. 13.

[2] *Official Records of the United Nations Conference on the Law of the Sea*, vol. III, annexes, document A/CONF.13/C.1/L.77/Rev.1.

every special case, and a simple general rule would therefore have to leave room for regional adjustment. He himself considered that historic rights could not be dismissed out of hand, and he welcomed the growing awareness of the difficulties that such rejection would create. The rights safeguarded in the United States proposal were not prescriptive or exclusive, or built up by one State asserting them against the international community as a whole or against the coastal State: they were rights to use the resources of the high seas enjoyed by all and exercised by some over a long period. The five-year period was a rough and ready test for distinguishing the substantial users, and no one had argued that such a test, which would ensure that the exclusive rights of coastal States would not be limited unless there was good precedent, would be unfair. It was misleading to argue that historic rights were invoked only by the great maritime Powers against weaker coastal States in the process of economic development. The matter must be regarded in its entirety from the point of view of whole communities and individuals who for many years had depended on distant-water fishing for their livelihood. In other words, the same considerations should apply as those advanced when help to under-developed countries was being discussed.

13. It should be emphasized that the United States proposal did not give full recognition to historic rights, the exercise of which would be subject to precise quantitative limitations. However, the formula was not perfect, and there was some force in the criticisms that it sought to establish certain rights in perpetuity for some States, and that the quantitative limitations would be difficult to apply. Perhaps some of those objections could be met by providing for the lapse of historic rights within a specified period, an idea that had already been mooted and should now be discussed in detail. With the co-operation and acquiescence of States claiming such historic rights, it should be possible to decide on the term and to be reasonably generous about it. It was not impossible to ascertain the way in which capital investment and the economic life of communities would be affected. In addition, some compensatory provision to meet cases of exceptional hardship to the coastal State might be needed. In most cases, however, it was unlikely that the fishing potential of coastal States would expand more quickly than the rate at which the present users would terminate their interests.

14. As the proposals stood, the New Zealand delegation would support only that of the United States because it was the only one containing all the ingredients essential to a final settlement, though there might be scope for some revision of the recipe provided all the ingredients remained.

15. Sir Claude COREA (Ceylon) recalled that, despite the seven sessions it had devoted to the law of the sea, the International Law Commission had been unable to arrive at agreed conclusions on the two questions of the breadth of the territorial sea and fishery limits. It was true that it had succeeded in drafting more than a hundred articles, dealing with many important aspects of the law of the sea, on the basis of which the first United Nations Conference on the Law of the Sea had drawn up four international instruments in 1958; but the final ratification and universal acceptance of those instruments depended on whether the present Conference succeeded in reaching agreement on the breadth of the territorial sea.

16. His delegation believed that the first Conference had been very near agreement on the delimitation of the territorial sea and on the allied problem of the fishing zone. That it had not then been possible to conclude an agreement had been largely due to lack of time, a circumstance itself due to the very lengthy debate between advocates and opponents of the three-mile rule.

17. The present Conference was called upon to take up the work thus suspended in 1958. The general situation was more propitious to agreement; international tension had slackened, and if the Conference succeeded in its task it would be making its own contribution to a further improvement in international relations. But, if it failed, States might be tempted to delimit their territorial sea unilaterally, and to resort to the use of force to assert their claims to exclusive fishing rights in their coastal waters.

18. An objective approach to the issues with which the Conference was faced could well start from the universally accepted principle of the freedom of the seas. That principle was not only recognized by international law, but was also in the interest of the entire community of nations. From the earliest days, however, it had been admitted that each coastal State was entitled to assert jurisdiction over a certain breadth of the sea adjacent to its coast for security purposes. But in trying to determine how far they were entitled to encroach on the high seas to that end, sovereign States had been unable to agree upon a truly common standard. The three-mile rule, which had at one time commanded wide acceptance, was now obsolete. Indeed, the very States which had most ardently advocated it at the beginning of the 1958 Conference had, in the later stages, expressed through their votes their willingness to abandon it in favour of the more realistic concept of a six-mile limit to the breadth of the territorial sea. It could therefore be safely concluded that as a rule of international law the three-mile limit was dead.

19. He recalled that at the first Conference his delegation had declined to support the three-mile limit, urging that it be modified to keep up with changing circumstances. His delegation had believed then, and still believed, that it would be dangerous not to define the breadth of the territorial sea by means of a rule of international law. Hence the present Conference must, if it was to success, achieve a compromise between the two extremes of a three-mile and a twelve-mile limit. His delegation at present supported, as it had in 1958, the approach which sought to confer recognition on a territorial sea six miles broad, in the belief that such a limit would be generally acceptable to the international community as a reasonable and equitable compromise.

20. State practice in the delimitation of the territorial sea was not uniform, and the Conference was therefore faced with the necessity of formulating a new rule of international law acceptable to as large a number of States as possible, and of embodying that rule in a convention. But no such rule could hope to be acceptable and readily ratifiable by Governments unless it was based

on a fair and reasonable solution to an admittedly difficult problem. One of the tests of reasonableness was the universally recognized democratic one of acceptance by the majority. Whatever views individual States might hold, it was to be hoped that the will of the majority would prevail and be respected.

21. The delegation of Ceylon was convinced that a reasonable extension of the breadth of the territorial sea would not seriously jeopardize the principle of the freedom of the high seas: there was a sufficient expanse of ocean for all to share. It was gratifying to note, in that connexion, the changed attitude of the great Powers as reflected by their recognition of the growing needs of the smaller countries, and by their agreement to an equitable extension of the breadth of the territorial sea.

22. In considering what the new limit should be, it was important not to lose sight of the fact that a twelve-mile jurisdiction was vitally important to the coastal State only in the matter of the utilization of the living resources of the coastal waters. The needs of national security were not seriously engaged. In the modern ballistic age, it made little difference to national defence whether the territorial sea was six or twelve miles broad. The only valid reasons of national security were those relating to such things as immigration control and customs control, which could be dealt with quite adequately without extending the territorial sea to twelve miles. It could also be argued that too great an extension of the territorial sea might well impair the security of the coastal State by involving it in conflicts arising out of its inability to protect its extended rights. The areas in which the right of innocent passage applied would also be enlarged, and with them the possibility of disputes. Lastly, undue extension of the territorial sea might result in the limitation of access to hundreds of thousands of square miles of the high seas which were at present open to use by all countries; such restriction in turn would lead to longer and less economical commercial runs, to increased shipping costs, to reduced revenue for producers and to higher prices for consumers.

23. For all those reasons, his delegation could not support the proposal that the breadth of the territorial sea be extended to twelve miles, although that proposal was not in itself unattractive, and although a twelve-mile limit had already been recognized by an appreciable number of States. His delegation's position was the same as at the first Conference: it favoured a territorial sea of six miles, a breadth that was recognized by the laws of Ceylon.

24. The difficult problem of fishery limits might, in his delegation's view, be solved by establishing a fishing zone separate from, but contiguous to the territorial sea. Apart from the exercise of exclusive jurisdiction over certain territorial seas adjacent to its coast for purposes of national security, a coastal State had certain rights in respect of the exploitation of fishery resources in an adjacent zone of the sea, to satisfy the growing needs of its people. His delegation was glad to note that those rights were receiving wider recognition, and the delegations which at the first Conference had subscribed to the Convention on the Continental Shelf that granted to coastal States sovereign rights over the exploration and exploitation of the natural resources of the sea-bed and subsoil off their coasts would surely recognize the right of such coastal States to control the living resources of their coastal waters — resources often of vital importance to their economy and to the livelihood and very existence of their people. The Conference must not allow small, weak and economically less-developed nations to be deprived at an ever-increasing rate of substantial portions of their economic resources for no other reason than that more powerful members of the international community were technically better equipped to harvest them.

25. His delegation felt that many States were advocating an extension of the territorial sea to twelve miles because of the understandable confusion which appeared to have arisen in recent years about the exact meaning of the term " territorial sea ". A clear distinction should be drawn between the territorial sea, which gave coastal States sovereign jurisdiction over security, immigration, customs, public-health and criminal matters, and an exclusive fishing zone, which would give those States the same control over coastal fishing as they would have if their territorial sea were twelve miles wide. Analysis would show that the coastal State could not hope to derive any greater economic benefit from the adoption of a twelve-mile territorial sea than from the adoption of a narrower territorial sea with an additional exclusive fishing zone. The latter seemed to be the only possible formula which would satisfy the majority of States represented at the Conference and that would lend itself to universal and uniform application. Such matters as the recognition of historic fishing rights, or adjustments between neighbouring States, would have to be taken into consideration in the search for an acceptable solution; they could not be disregarded in the hope that they could be dealt with later by bilateral or regional agreements. Ceylon therefore believed that the Conference should consider a reasonable limit for the territorial sea and, in establishing an additional fishing zone contiguous thereto, should seek to safeguard the interests of those countries which had engaged constantly in fishing in that zone for a considerable time past. But his delegation would keep an open mind and seek a common basis on which substantial agreement might be reached.

26. Turning to the several proposals before the Committee, he expressed the view that, although the Soviet Union proposal (A/CONF.19/C.1/L.1) was attractive in so far as it would entitle coastal States to adopt any breadth between three and twelve miles for their territorial sea, that very flexibility was its greatest weakness. It was the Conference's task to formulate a rule of international law that would be uniform, precise and acceptable to all; but the Soviet proposal was likely to engender uncertainty, since countries would be free to establish the breadth of their territorial sea over a wide range. It was true that the proposals of the United States (A/CONF.19/C.1/L.3) and Canada (A/CONF.19/C.1/L.4) were open to the same objection, inasmuch as they provided for a maximum limit of six miles, but the smaller range of variation was likely to give rise to correspondingly fewer difficulties. A further attraction of the Soviet Union proposal was that, wherever a territorial sea of twelve miles was accepted, there would be no need to consider a separate fishing zone.

27. The Mexican proposal (A/CONF.19/C.1/L.2) also laid down a twelve-mile limit for the territorial sea, but sought to encourage States to adopt a narrower breadth by providing for a compensatory fishing zone, the extent of which would vary in roughly inverse proportion to the breadth of territorial sea adopted. Again, the principal objection was that confusion might ensue if different States adopted different limits. Recalling that the Mexican representative had referred at the 10th meeting to a number of treaties concluded by his country with other States, including the United States of America and the United Kingdom, in which the limit of the territorial sea had been set at three marine leagues, he expressed the hope that the representatives of the two last-named countries would explain how they reconciled recognition of a territorial sea of nine miles in those bilateral treaties with their present contention that the maximum breadth of the territorial sea should not exceed six miles.

28. His delegation regarded the Canadian proposal as unrealistic, in that it failed to allow for rights enjoyed for many years by countries which had fished in the sea areas to be included in the additional six-mile zone adjacent to the six-mile territorial sea. It was neither just nor equitable that such rights should be summarily abolished. While it recognized that coastal States should generally be entitled to exclusive fishing rights in a substantial area of sea adjacent to their coasts, the delegation of Ceylon would hesitate to be party to any attempt to abolish prescriptive rights, which under most systems of law were recognized in other spheres as fair and equitable. It should be possible to reconcile the rights of coastal States with those of States which had fished for long periods in the areas concerned, through bilateral agreements regulating fishing practices and imposing limitations by quantity or species, or other mutually acceptable restrictions, as suggested in the United States proposal. The Canadian proposal might appropriately be amended by the inclusion of a clause providing for the negotiation of bilateral arrangements of that kind.

29. At the first Conference the delegation of Ceylon had supported the original United States proposal,[3] which had been a realistic and reasonable compromise between the rights of coastal States and the historic rights of other States. That proposal had come nearest to commanding the required two-thirds majority. It was to be regretted, therefore, that the United States Government had seen fit to amend that proposal and submit it to the present Conference in a form which sought to modify the rights of fishing States of long standing. The United States delegation had explained that it had yielded to adverse criticism of its original proposal, and made a further concession in its search for a satisfactory solution. Although the present proposal recognized the rights of fishing States, it sought to curtail them, and was therefore unacceptable to the delegation of Ceylon. The rights of coastal States and those of fishing States could be adjusted only through mutual understanding and bilateral agreement. Apart from being inequitable, such limitations as were suggested in the United States proposal would in practice be extremely difficult, if not impossible, to enforce, since it was unlikely that the statistics currently available differentiated between catches made within the twelve-mile zone and those made outside it.

30. The delegation of Ceylon believed that the special interest of a coastal State in the living resources of the sea could but rarely justify the complete exclusion from its coastal waters of fishing States which had exercised the right to operate in those waters for a long period. It had therefore been attracted to the Cuban representative's suggestion at the 2nd meeting that the conflicting interests might be reconciled on the basis of " preferential ", as opposed to " exclusive ", fishing rights for coastal States. Such a system might offer a practical solution with least harm to either group of States, and he hoped that the Cuban representative would embody his suggestion in a definite proposal. The Ceylonese delegation would carefully study all proposals and suggestions put to the Conference, and lend its weight to the common effort to reach a satisfactory solution.

The meeting rose at 12.40 p.m.

SIXTEENTH MEETING

Tuesday, 5 April 1960, at 3.15 p.m.

Chairman: Mr. José A. CORREA (Ecuador)

Consideration of the questions of the breadth of the territorial sea and fishery limits in accordance with resolution 1307 (XIII) adopted by the General Assembly on 10 December 1958 *(continued)*

GENERAL DEBATE *(continued)*

Statements by Mr. Rafael (Israel) and Mr. Lamani (Albania)

1. Mr. RAFAEL (Israel) said that the first important question before the Conference was how to reconcile the universal interest in the freedom of the seas, including the freedom to fly over them, with the desire of the coastal States to protect their sovereignty. The second was how to reconcile new, and not unjustified, demands for exclusive fishing rights in extended areas of what had been high seas with the existing fishing rights and practices of non-coastal States in those areas.

2. Israel's basic position on those questions had remained unchanged since the 1958 Conference and the thirteenth session of the General Assembly. The results of the 1958 Conference supported the belief that the remaining questions could be solved by the present Conference, which would thus be crowning the edifice of the law of the sea erected by generations of jurists and codified by a great joint international effort in the four Conventions of 1958. Those Conventions established the incontestable law of the sea by which every nation should abide.

3. The improvement of living conditions and the strengthening of its security were among the principal

[3] *Ibid.*, vol. II, annexes, document A/CONF.13/L.29.

concerns of Israel, one of the group of new States. Yet it did not believe that its security would be increased merely by an extension of the territorial sea. The larger the security area, the greater and the more costly were the means required to protect it, and if the extended area of territorial sea was not adequately protected, the risks of foreign interference were correspondingly greater, especially in times of stress and emergency.

4. Freedom of navigation and international intercourse, the unhampered flow of commerce, and the increasingly pressing requirements of civilian air traffic all spoke strongly in favour of leaving the greatest possible area of the world's seas open and subject to the concept of the freedom of the seas. The extension of national sovereignty over areas which had been part of the high seas would abolish rights previously universally enjoyed and create new problems, frictions and disputes. The clearly discernible trend of the world was towards increased international co-operation. It would be anachronistic to reduce the sea and air space which had been open to all peoples and nations.

5. Israel had a natural and direct interest in all maritime matters owing to its geographical position. The Government had been devoting special attention to the revival of maritime activities; from negligible beginnings, a merchant marine fleet exceeding 250,000 tons had been built up, and further increases were planned. Much effort had been invested in the development of the fishing fleet and industry.

6. The national airlines operated a far-flung network of air services, and many foreign airlines were also operating into Israel. All that traffic passed over large expanses of sea. Any extension of the territorial sea would seriously harm air communications and might even endanger the safety of air travel. He drew attention to article 6 of the 1944 Convention on International Civil Aviation, which stated that no scheduled international air service might be operated over or into the territory of a contracting State, except with the special permission of that State. That article should be read in conjunction with the stipulation in article 2 of the 1958 Convention on the Territorial Sea and the Contiguous Zone that the sovereignty of the coastal State extended to the airspace over the territorial sea.

7. So far as fishery limits were concerned, he said it was recognized that conservation was a matter of common concern and overriding interest to all countries, both those which caught fish and those which only consumed it. Israel believed that properly co-ordinated conservation measures should be applied whenever necessary, whether in the high seas or in the territorial sea. It participated in the Conseil Général des Pêches pour la Méditerranée, one of a number of fishing councils which co-ordinated the necessary scientific research and stimulated both the productivity of the fishing industry and the necessary conservation measures.

8. While reserving its position in respect of the areas in which Israel's fishermen were operating, his delegation was impressed by the concern of many States in stronger measures to protect their own coastal fishing. Many of the new States, particularly in Africa, depended on the coastal sea for their supply of animal protein, and it should be clearly recognized that those countries should have unimpeded and uncontested opportunities to develop fully their fishing activities in their adjacent seas. Israel therefore accepted the principle of the contiguous fishing zone in which the interests of the coastal State should prevail. There were, on the other hand, many countries which engaged in coastal fishing, not because rich fishing grounds were located near their coasts, but simply because they lacked the equipment, technical knowledge and experience for distant-water fishing. That had been Israel's case, too, but thanks to the increased possibilities of acquiring modern equipment, of training crews, of co-operating with experienced fishing countries, and to the progress made in the techniques of refrigeration and marketing, the fishermen of Israel were now able to venture to more distant waters. There was every reason to hope that in the future important progress in that branch of economic activity would be recorded, and Israel was already in a position to share its experience with some of the new States.

9. He proposed, therefore, that the Conference should not content itself with the definition and protection of rights and interests, but that it should recommend the more advanced fishing countries to grant technical, financial and other assistance to the States wishing to develop a modern fishing industry. Such a scheme of technical assistance, apart from providing tangible evidence of international solidarity, would, he thought, actually contribute to the settlement of competing claims to fishing rights. The countries anxious to protect themselves against encroachments would be able and willing, once they possessed modern equipment and the capacity to use it, to engage in more profitable forms of fishing, and the greater equality in facilities and equipment should make it easier to reconcile conflicting interests. He hoped the idea of technical assistance would commend itself to the Conference and find appropriate expression in its work.

10. It was widely recognized that any abrupt termination of existing and traditional fishing practices in coastal waters would cause considerable hardship and injury, and would affect great numbers of hardworking fisherfolk whose livelihood depended on distant-water fishing. Those maritime countries whose coastal waters did not yield abundant supplies of suitable fish, and whose fishermen had for centuries been fishing in distant waters, had acquired costly equipment for that kind of fishing, sometimes only recently. Those interests also demanded due recognition in any genuine compromise. If any extension of an exclusive fishing zone were to be accepted, there should in all fairness be a transition period during which necessary adjustments could be made. Such a period would also provide the opportunity for the negotiation of bilateral or multilateral agreements to take the place of the existing practices.

11. Israel wanted the Conference to reach agreement, and that could not be achieved by one-sided concessions. A true compromise should take into account not only the various conceptions of fishing rights but also, and equally, the requirements of free navigation on the sea and in the air and the legitimate preoccupations of the coastal States. Israel was in favour of the fullest measure of freedom of navigation, and that freedom would be impaired by any undue extension of the territorial sea or any other restrictive measures changing

established rules and practices. It favoured a maximum limit of six nautical miles for the territorial sea. It also accepted, in principle, the establishment of an additional fishing zone not exceeding a further six miles, provided that it was accompanied by suitable provisions to avoid undue harm to existing rights and to allow sufficient time for the completion of the necessary supplementary bilateral or multilateral agreements.

12. With regard to the question of exceptional situations, such as that of Iceland, he said the general trend of opinion in the Conference seemed to indicate that most of the legitimate anxieties and requirements in that connexion could be satisfied. However, since any formula which the Conference might finally adopt would be of a general nature and would not be designed to cover in detail every particular contingency, Israel believed that the Conference should explicitly recognize the existence of exceptional situations.

13. Mr. LAMANI (Albania) said that the exchanges of views in 1958, even if they had not yielded concrete results, had at least cleared the way. The attempt made by certain countries at that time to impose the alleged three-mile rule had failed. Nor had the supporters of the three-mile rule succeeded in securing acceptance of the six-mile limit, which they had represented as a compromise, whereas it had been in fact an attempt by the colonial Powers to preserve privileges previously acquired at the expense of defenceless peoples. In 1958, and again in 1960, a large number of States had expressed their preference for a territorial sea extending to a twelve-mile line. The International Law Commission had stated that international practice was not uniform and had expressed the view that international law did not permit an extension of the territorial sea beyond twelve miles; [1] the inference to be drawn from that conclusion was that every State was entitled to claim up to twelve miles without thereby violating international law. Moreover, the synoptical table prepared by the Secretariat (A/CONF.19/4) showed that, apart from a few exceptions, States had adopted limits not exceeding twelve miles. The conclusion of the International Law Commission was, accordingly, well on the way to becoming a general rule. That was why the Soviet Union proposal (A/CONF.19/C.1/L.1), which was very flexible, offered the most satisfactory formula and had the best chance of being adopted by the Conference.

14. In Albania's case the limit that would best safeguard the security of the State was that of twelve miles; it had often happened that maritime Powers had carried out demonstrations of force off the shores of a weaker country, in order to intimidate it. The twelve-mile limit would help to remove certain misunderstandings and to improve the international atmosphere. He did not agree with the argument that the twelve-mile limit would impair the freedom of the seas; innocent passage through the territorial sea was a generally accepted practice which was expressly recognized in the 1958 Convention on the Territorial Sea and the Contiguous Zone.

15. The countries which were so zealous in defending the freedom of the high seas were precisely those which undermined that freedom by building radar stations far out at sea for the ostensible purpose of international security. In that connexion he cited a passage from a book by Mr. Olivier de Ferron,[2] which mentioned that at the 1958 Conference certain encroachments on the high seas had been overlooked; namely, the construction by the United States of America of a chain of radar towers called " Texas towers ", at a distance of 150 miles from that country's coast. Built on floating platforms, those towers were anchored to the sea-bed and constituted so many encroachments on the high seas, with the consequence that large areas were in effect brought under the sovereignty of the coastal State, in breach of international law.

16. By a decree of 4 September 1952, Albania had fixed the breadth of its territorial sea at ten miles. One-third of Albania's frontier ran along the coast, and the coastal waters were rich in fish. Since its liberation, Albania had created a new fishing industry and established a number of canneries, which contributed materially to the strengthening of the national economy. Its example disproved the assertion that small countries could not exploit their resources themselves. In some quarters it was desired to perpetuate the humiliating position of the small countries; but the liberation of the peoples was proceeding, and the process could not be reversed. The young nations wanted to make use of their resources themselves; they should be given the opportunity to do so, all peoples should be treated as equals, and the rights of others should be respected. That was the realistic spirit in which the Conference should approach the problems before it; the practice that had grown up should be adopted as the rule of law.

The meeting rose at 4 p.m.

SEVENTEENTH MEETING

Wednesday, 6 April 1960, at 10.30 a.m.

Chairman: Mr. José A. CORREA (Ecuador)

Consideration of the questions of the breadth of the territorial sea and fishery limits in accordance with resolution 1307 (XIII) adopted by the General Assembly on 10 December 1958 *(continued)*

GENERAL DEBATE *(continued)*

Statements by Mr. Hassan (United Arab Republic), Mr. Sohn (Republic of Korea), Mr. Matine-Daftary (Iran), Mr. Elizondo (Costa Rica) and Mr. Povetiev (Byelorussian Soviet Socialist Republic)

1. Mr. HASSAN (United Arab Republic) said that, while it was generally recognized that the first United Nations Conference on the Law of the Sea had been most successful, that Conference had none the less failed to reach agreement on the questions of the breadth of the territorial sea and fishery limits, largely because

[1] *Official Records of the Genera Assembly, Eleventh Session, Supplement No. 9*, p. 4.

[2] *Le droit international de la mer* (Geneva, Librairie E. Droz, 1958), vol. I, p. 157.

its approach to those two issues had been unrealistic. The present Conference could itself succeed only if it took into account the realities of the international situation and the vital interests of all States, and made no attempt to impose arbitrary rules or to adopt decisions that could not be regarded as universally accepted. Although his Government had had some misgivings about the advisability of convening the present Conference so soon after the first, it had agreed to that course in a spirit of conciliation, and in the hope that a proper approach would lead to a generally agreed solution. The United States representative had drawn attention both to the hazards that lay ahead unless agreement was reached and to the serious effects the controversy had already had on friendly relations between certain States. Moreover, the United Kingdom representative had stated that, should the Conference fail to reach agreement, his Government would revert to the three-mile rule. Such statements did not contribute to the atmosphere which should prevail in a conference of representatives of sovereign governments meeting to work out a freely agreed and generally acceptable solution.

2. Elaborate juridical arguments had been adduced to support different interpretations of article 3 of the draft articles prepared by the International Law Commission, but the problem was not a purely legal one, otherwise the Commission would surely have found an appropriate solution to it. At the instance of the Commission itself, the present Conference was now assembled for the purpose of formulating and adopting rules that would be freely accepted. Any such rules should be based on general state practice, not on that of a handful of States that had repeatedly been challenged and now finally rejected. The general practice he had in mind was coming to command universal acceptance, and commended itself in particular to the countries which had recently gained their independence and which had a right to take part in the formulation of the rules and norms of international law. For economic and security reasons the small and economically less developed countries were in favour of a broader territorial sea up to twelve miles in width, or of the establishment of exclusive fishing zones. Those countries in particular were faced with the need to develop their natural resources and improve the living standards of their peoples.

3. Whereas the Canadian proposal (A/CONF.19/C.1/L.4) took account of such economic factors, the United States proposal (A/CONF.19/C.1/L.3) would seriously limit the rights enjoyed by coastal States in their contiguous fishing zone. The delegation of the United Arab Republic believed that the Conference ought not to sanction any rule that discriminated against the small countries which had not had the same opportunities as the great maritime Powers of acquiring historic fishing rights. As the representative of Ghana had stated in the Sixth Committee of the General Assembly,[1] the Conference should quash any idea that historic rights could be invoked as grounds for conferring fishery privileges on certain States. At the 8th meeting the representative of Yugoslavia had rightly stated that such " historic rights " had no legal basis; they had been imposed by force, having had their origin in colonialism.

[1] *Official Records of the General Assembly, Thirteen Session, Sixth Committee*, 584th meeting.

4. To safeguard its national security, a coastal State needed a reasonably broad territorial sea to ensure that foreign warships and military aircraft were unable to pass through or over areas closely adjacent to its coast for purposes of intimidation. Small countries attached particular importance to that aspect of the territorial sea, and at the first Conference had consistently opposed the adoption of any provision that did not explicitly recognize the right of the coastal State to make movements of foreign warships in its territorial sea subject to its authorization. In that respect, the Canadian proposal did not provide adequate protection for small countries. Although some speakers had questioned the importance of a twelve-mile territorial sea to a coastal State from the point of view of national security, he would emphasize that many small countries were deeply apprehensive about the possibility of foreign warships and aircraft staging demonstrations of force off their coasts. He hoped that, in its proper preoccupation with the sea, the Conference would not overlook the real threat that military aircraft could constitute in that respect.

5. His Government's attitude to the matters under discussion was prompted not by political expediency relating to a specific situation, but by considerations of general policy, based on sound legal principles and dictated by compelling economic and security needs. The general discussion had revealed that that position was shared by a great number of countries in different parts of the world, the majority of them small and newly independent. He emphatically denied that at the first Conference the attitude of some of the Arab countries to the law of the sea had been coloured by a political problem relating to a certain part of their territorial waters, as had been alleged by the present leader of the United States delegation in two articles published in 1958.[2]

6. While his delegation shared the earnest hope expressed by many speakers that the Conference would meet with success, it was convinced that real success could only be found in the adoption of an equitable rule of law based on sound principles and capable of reconciling the interests of all States, large and small alike. It would therefore support any proposal that fully recognized the right of a coastal State to determine the breadth of its territorial sea between the limits of three and twelve miles.

7. Mr. SOHN (Republic of Korea) said that his delegation shared the optimistic view expressed by many other delegations that the present Conference would find a satisfactory solution to the closely related problems of the breadth of the territorial sea and fishery limits. He recalled that at the first Conference the great maritime Powers had advocated a three-mile or a six-mile limit for the territorial sea — a preference that was perhaps understandable in the light of their large fishing interests extending to waters adjacent to the coasts of other States — whereas many of the small nations had favoured

[2] Arthur H. Dean, " Freedom of the Seas ", *Foreign Affairs*, vol. 37, October 1958, No. 1, pp. 83 ff., and " The Geneva Conference on the Law of the Sea: What was Accomplished ", *American Journal of International Law*, vol. 52, October 1958, No. 4, pp. 607 ff.

a wider territorial sea, which they considered necessary for safeguarding their paramount interests in the seas adjacent to their coasts. However, many of those smaller States had advocated a twelve-mile territorial sea, not so much for security reasons as to enable themselves to exercise exclusive control over fishing and the exploitation of the other living resources of that sea, and there were now encouraging signs that a majority of coastal States would be willing to forgo a twelve-mile territorial sea if exclusive fishing rights were recognized to them in a wider zone of their coastal high seas. The main divergence of views persisted, but a satisfactory compromise between the position of the coastal States and that of the maritime Powers might perhaps be found in a uniform rule providing for a territorial sea of less than twelve miles, but allowing coastal States to exercise control over fishing in the contiguous zone, and in an outer high-seas zone if necessary. Every State naturally wished to safeguard its national security and the well-being of its people when determining the breadth of its territorial sea and fishery limits, and due consideration should be given to the needs and circumstances of coastal States.

8. His delegation believed that, in deciding the question of fishery limits, the Conference would be obliged to recognize the validity of the fundamental concept that the right of a coastal State to fish in its coastal waters should take precedence over that of other States wishing to fish there. The coastal State enjoyed prescriptive fishing rights in its coastal waters and was therefore entitled to preferential treatment in them. Moreover, a large part of the propulation of such coastal States as Korea depended on coastal fisheries for its livelihood, unlike the people of those States which possessed large and well-equipped fishing fleets. Many coastal States and their peoples had made severe sacrifices to apply and enforce fishery conservation measures in their coastal waters, and it would be unfair to allow the nationals of other States to fish without restriction in those waters, particularly where the optimum sustainable yield would suffer. A non-coastal State or States wishing to continue to fish in the coastal high seas of another State should conclude a bilateral or multilateral agreement with the latter on the regulation and limitation of fishing in the area concerned, under which the coastal State should be allowed to regulate fishing in and the exploitation of the living resources of its coastal high seas, the nationals of other States being obliged to comply with any conservation regulations enacted to that end.

9. As other speakers had pointed out, the circumstances and legitimate interests of coastal States varied, and, although it would be generally desirable to have a rule of universal application, any rigid formula which failed to take account of such differences would be unrealistic and hence unacceptable to many States. Certain cases undoubtedly called for special consideration and special treatment, and provision would have to be made for the parties concerned to adjust their interest through bilateral or multilateral agreements, with due regard for the geographical political, economic and historical factors involved. Thus, any formula adopted by the Conference should be sufficiently flexible to encourage the coastal and distant-water fishing States concerned to conclude appropriate regional agreements.

10. His delegation was entirely in agreement with the principle of the preferential requirements of States dependent on coastal fisheries, as set forth in resolution VI adopted by the first Conference.[3] That resolution applied only to exceptional situations, but his delegation hoped that, as the Cuban representative had suggested, the application of the principle might be extended to coastal States in general, thus enabling them to invoke more freely their preferential right to safeguard their legitimate interests and needs.

11. In conclusion, his delegation earnestly hoped that agreement would be reached on a just and fair means of utilizing the resources of the sea, on which both coastal and other States depended.

12. Mr. MATINE-DAFTARY (Iran) was convinced that all those taking part in the Conference, and especially those who had also taken part in the first Conference in 1958, wished on the present occasion to settle the question — the line of demarcation between the two zones of the sea — on which the implementation of the Convention on the Territorial Sea and the Contiguous Zone and the Convention on the High Seas depended. Failure on the part of the Conference would not only render part of the noteworthy achievements of 1958 useless and unproductive; it would also put international shipping in a chaotic situation from which it would be difficult to find a way out in the near future. Since the first Conference, despite the fact that it had often been hamstrung by the international tension prevailing at the time, had succeeded in codifying almost the whole of international law relating to the sea, there were grounds for hoping that now that the international climate had taken a decided turn for the better, the second Conference would be able to settle the problem of the breadth of the territorial sea.

13. In his delegation's view, the sole solution that met the requirements of the majority of States in the matters of security, conservation of marine resources and national economy was to leave States free to fix the breadth of their territorial sea at any distance up to twelve nautical miles, on the basis of international practice as confirmed by the International Law Commission after a thorough study of the question extending over several years. He recalled that he had already had occasion to demonstrate, in the Second Committee of the first Conference,[4] why the maritime powers were attached to the doctrine of *mare liberum* and why they persisted in ceding no part of the high sea, which for them was *mare nostrum*. The three-mile rule was now outdated, but it was still being harped upon with the object of securing more favourable consideration for the six-mile compromise formula; it should be noted, moreover, that it had been said that that compromise was revocable, in order to emphasize the fact that prior to 1958 the maritime Powers had never subscribed to a breadth of more than three miles for the territorial sea. The example of Mexico — whose representative had cited a number of treaties recognizing breadths of up to twenty kilometres for Mexico's territorial sea — was enough to demolish the argument that the six-mile formula represented a compromise.

[3] See *Official Records of the United Nations Conference on the Law of the Sea*, vol. II, annexes, document A/CONF.13/56.

[4] *Ibid.*, vol. IV, 11th meeting.

14. The Governments that were against the twelve-mile limit invoked technical or administrative arguments in support of their contention, especially the difficulty of anchoring in the high sea adjacent to a territorial sea twelve miles broad, the poor visibility resulting from the adoption of such a breadth, the difficulty that shipping would experience in establishing the demarcation line at such a distance from the shore, and, lastly, the heavy responsibility that would fall upon the coastal State in organizing and maintaining effective control over such a large sea area.

15. Shipping experts did not admit the validity of all those technical arguments. Inadequate visibility would affect only coastal shipping, for which shore signals were provided. Astral navigational methods were now so highly developed that even fishermen were invariably able to fix their position. Shore-marks could easily be picked up by radar. As to anchoring, the depth of the sea did not depend on the distance from the coast. In some places near the coast the sea was too deep for anchoring and *vice versa*. One wondered, moreover, why the master of a ship should wish to anchor twelve miles from the coast in a depth of possibly 700 fathoms unless his vessel was in distress, in which case he could make for the nearest port and anchor there pursuant to the right of passage, which, under article 14, paragraph 3, of the Convention on the Territorial Sea and the Contiguous Zone, included the right of stopping and anchoring, in particular in the event of *force majeure* or distress.

16. With regard to the responsibility for control, which devolved upon the coastal State, he pointed out that States were free to fix the breadth of their territorial sea anywhere between three and twelve miles, according to their resources; States which were not yet in a position to wield effective control over a breadth of twelve miles could do so later, as and when their financial and technical means allowed. The twelve-mile formula had the merit of being flexible enough to allow of its adaptation to any situation. He quoted as an example the case of his own country, which, from 1934 until 1958, had divided the twelve-mile breadth of Iranian waters into a territorial sea six miles broad and a contiguous zone of like width. In 1959 it had extended its control to take in a territorial sea twelve miles broad, solely for security reasons, since it had possessed acquired rights over the living resources of the sea throughout that zone before that extension of sovereignty. All the living resources of the Persian Gulf belonged by historic right to all the coastal States thereof, that right having been expressly laid down in article 7 of the Iranian law of 1959 on the territorial sea. Iran's two neighbours, Saudi Arabia and Iraq, likewise coastal States of the Persian Gulf, had been moved by the same concern for security when they had increased the breadth of their territorial sea to twelve miles before Iran had done so. The same held good for many African, Asian and Latin-American States, especially those which, after having been the subjects of colonialism based mainly on naval power, had recently gained their independence. The tragic memory of the appearance of warships in the coastal sea, threatening any liberation movement in those countries, was still unforgettable, and a breadth of six miles, insufficient as it was to keep warships out of sight, would not give such countries an adequate safeguard. A highly important psychological factor, which the great sea Powers would have to appreciate better if they really wished to dispel the mistrust and uneasiness that at present divided the world, was involved.

17. The compromise offered by the maritime Powers, in the shape of a six-mile zone — called a fishing or " outer " zone — in which the coastal State would possess so-called " exclusive " fishing rights, did not stand up to examination. It was inconceivable that the coastal State would be able to enforce its exclusive fishing rights unless it enjoyed in the zone in question sovereign rights enabling it to enact such laws and regulations as were necessary to ensure the security of fishing, and to prohibit fishing by foreign vessels therein, in conditions similar to those which, under article 14, paragraph 5, of the Convention on the Territorial Sea and the Contiguous Zone, prevailed in the case of the territorial sea. Exclusive fishing rights would be illusory if warships — for which the fishing zone was simply the high seas — availing themselves of their absolute immunity and policing rights, could indulge in operations that would constrain the coastal State to give up fishing. The outcome would be a state of insecurity far from propitious to investments to develop fishing in what were known as the " economically under-developed countries ".

18. He recalled that for the continental shelf the Fourth Committee of the first Conference on the law of the sea had proposed exclusive rights alone.[5] It had been at the instance of the representatives of India and Iran that that Conference had decided to replace the expression " exclusive rights " by the expression " sovereign rights " in the Convention on the Continental Shelf.[6]

19. The second Conference could succeed only if the maritime Powers came to the realization that an outer zone devoid of sovereign rights and of restrictions on the movements of warships would be worthless. The outer zone, with sovereign fishing rights included and freedom of action by warships precluded, would be virtually equivalent to the territorial sea. Since the maritime Powers were so strong that they had nothing to fear from the application of the twelve-mile principle, he urged them to accept that principle outright. If they did not do so, the Conference would fail, and it was in the general interest to avoid the need for a third conference on the law of the sea.

20. Mr. ELIZONDO (Costa Rica) said that, as a small peace-loving nation with strong democratic traditions, his country had throughout its history consistently worked to improve its good relations with other nations.

21. The basic principle of the sovereign equality of States, embodied both in the Charter of the United Nations and in that of the Organization of American States, implied that international relations were governed by the rule of law and that countries were equal before the law regardless of their political, military or economic strength. It was in that spirit that the various countries represented at the Conference had been called upon to participate in the settlement of the important problems

[5] *Ibid.*, vol. II, annexes, document A/CONF.13/L.12.

[6] *Ibid.*, vol. II, 8th plenary meeting.

of the territorial sea and fishery limits, and that Costa Rica would contribute to their efforts to find acceptable solutions to those problems.

22. All those who had so far spoken had agreed that the two important issues in question had been the subject of prolonged controversy without any uniform rule having emerged either in state practice or in written jurisprudence. That situation accounted for the diversity of views on the subject, and the enactment at national level of successive statutory provisions which tried out one solution after another, each in turn being replaced by an improved formula.

23. His delegation considered that the formula which sought to establish a territorial sea six miles broad represented a satisfactory compromise between the various proposals to extend the traditional, but now obsolete, three-mile limit, and that the adoption of such a six-mile limit would not impair the freedom of navigation.

24. Extensive claims were out of the question for Costa Rica, which was aware of the legal consequences of such claims and of the obligations and duties flowing from them. Costa Rica, having an eminently pacifist tradition, had abolished by constitutional provision the army as a permanent institution. His country did not therefore possess the necessary power to enforce its authority over unduly large areas, particularly since it had a coast both on the Pacific and on the Atlantic Ocean. It was therefore out of the question for it to assume the grave obligations and heavy expenditure that greater claims would entail. The six-mile formula was accordingly acceptable to his delegation, not only because it was a satisfactory compromise but also because it suited Costa Rica's special circumstances.

25. His delegation also favoured the establishment of a fisheries zone, adjacent to the territorial sea, the living resources of which the coastal State could utilize for its economic development and food supply. Costa Rica did not yet engage in large-scale fishing, but the industry was developing; moreover, coastal fisheries already provided the coastal inhabitants with a livelihood. It was therefore in the conviction that the utilization of the living resources of the sea would, in the not too distant future, prove to be one of the most effective instruments of economic development, and make an important contribution to his country's food supply, that his delegation supported the proposal for the establishment of a fisheries zone six miles broad, in which the coastal State would exercise the various rights which that zone implied.

26. Lastly, he expressed his sincere hope and belief that the joint efforts of all present would finally lead to a satisfactory solution of the questions before the Conference.

27. Mr. POVETIEV (Byelorussian Soviet Socialist Republic) said that, faithful to its policy of peaceful coexistence and co-operation with all States regardless of their social system, his Government was convinced that all controversial problems, no matter how complex, could be settled by negotiation and conciliation, given goodwill and the determination to take the mutual interests of States concerned into account as fully as possible. But such a task sometimes needed time, and together with others, his delegation had argued at the thirteenth session of the General Assembly that the Second United Nations Conference on the Law of the Sea should not be convened too hastily, on the grounds that little real change had occurred in the attitude of Governments on the question of the breadth of the territorial sea since the first Conference, and that it might even be inimical to a solution of the question of the breadth of the territorial sea to hold another too soon. Some delegations had thought otherwise. Nevertheless, his delegation hoped that a generally acceptable solution would emerge.

28. The proposals before the Committee could be placed in one of two groups: those providing for a territorial sea up to twelve miles broad, and those limiting the breadth to six miles. The proposals of the Soviet Union (A/CONF.19/C.1/L.1) and Mexico (A/CONF.19/C.1/L.2) were identical so far as the delimitation of the territorial sea was concerned, and offered an acceptable basis for agreement, since they were inspired by a realistic assessment of the trend in international practice whereby each coastal State determined the breadth of its own territorial sea within the maximum of twelve miles, as the maintenance of its security, sovereignty and independence and the protection of its economic interests demanded. Such a solution would be consistent with the conclusions of the International Law Commission, reached after exhaustive study.

29. The merit of those two proposals was that they took more fully into account than others the interests of all coastal States in accordance with the principles of sovereign equality and self-determination enshrined in the Charter of the United Nations and various decisions of the Organization. They recognized the right of all countries, great or small, to exploit their natural resources freely, and would help the less developed countries to expand their economy and raise their standards of living.

30. His delegation found the proposals of the United States (A/CONF.19/C.1/L.3) and Canada (A/CONF.19/C.1/L.4), which sought to establish a six-mile limit, unacceptable. They ignored international practice and clearly discernable trends in the legislation of coastal States concerning their territorial sea. It was common knowledge that fourteen States had fixed a twelve-mile limit since 1945 and that at present sixteen States upheld it.

31. The advocates of a six-mile limit had declared themselves willing to make " concessions ", but if they genuinely regarded a three-mile limit as advantageous there was nothing to prevent them from adhering to it. In fact, the opponents of a twelve-mile limit were seeking to extort a real sacrifice out of a number of States already possessing a territorial sea wider than six miles to the detriment of vital interests consecrated by long usage.

32. The main objective of the champions of the six-mile limit was to obtain for their naval forces unconditional, so-called legitimate, access to foreign waters close to coasts in which they were interested for strategic or political reasons. Events during recent years had convincingly shown how certain Powers had made use of such methods to bring effective pressure to bear on other States whose policies they disliked. The real motives for opposing the twelve-mile limit were being kept out of sight and hearing.

33. At the Committee's 4th meeting, the United States representative had expressed his Government's preference for a three-mile limit, which in the United States' view would serve the interests of all countries. In explaining the United States Government's opposition to a twelve-mile limit, Mr. Dean had indicated that such a limit would allegedly be contrary to the interests of the majority, would hinder navigation, would cause serious incidents in international straits, would affect established sea routes passing through zones contiguous to territorial seas, and would cause anchorage difficulties. The Byelorussian delegation associated itself with the pertinent criticisms levelled against those factitious arguments, especially by the representatives of Poland and Yugoslavia.

34. Mr. Dean's statement on 20 January 1960 before the Senate Foreign Relations Committee shed some light on the real motives underlying the United States proposal. Referring to the preparations for the present Conference, Mr. Dean had said:

> " Our navy would like to see as narrow a territorial sea as possible in order to preserve the maximum possibility of deployment, transit and manoeuvrability on and over the high seas, free from the jurisdictional control of individual States."

Mr. Dean himself had supplied the answer why the United States Navy stood in such need when he had gone on to say:

> " The primary danger to the continuance of the ability of our warships and supporting aircraft to move, unhampered, to wherever they may be needed to support American foreign policy presents itself in the great international straits of the world — the narrows which lie athwart the sea routes which connect us with our widely scattered friends and allies and admit us to the strategic materials we do not ourselves possess."

Thus Mr. Dean had discussed the position of international straits in definitely strategic terms. He had worked out that a twelve-mile limit would result in 116 of the major international straits coming under the sovereignty of coastal States, whereas with a six-mile limit only 52 would be so affected. Mr. Dean had gone even further in stating that with a six-mile limit probably only 11 States would claim the right to terminate or interfere with the transit of United States warships or military aircraft, and had concluded that although this would " present a defence capability impairment, that impairment is believed to be within tolerable operating limits ".

35. Such were the fundamental motives of the so-called United States compromise proposal, and the considerations he had quoted — which had possibly not been intended for discussion at the present Conference — explained the determined refusal of the United States Government to accept a twelve-mile limit. Although in the Committee Mr. Dean had given entirely different reasons for his proposal, there was no reason to doubt the authenticity of the case he had put to the Senate Committee.

36. It should be added that United States naval forces were at present stationed far from their home waters. For example, the Sixth Fleet was in the Mediterranean, the Seventh Fleet off the coasts of the Chinese People's Republic, and the Fifth Fleet was assembling in the Indian Ocean — all of which proved that the United States Navy had been transformed into the instrument of a definite foreign policy.

37. It was hardly necessary to adduce further evidence to show that the United States' position with regard to the territorial sea had nothing to do with the progressive development of international law and with the purposes and principles of the United Nations Charter.

38. He reiterated his conviction that the problems before the Conference could be solved on the basis of the Soviet Union proposal, which constituted the only viable and realistic compromise. It was consistent with state practice, was, of general applicability and met the varied interests of all States. It would require neither substantial sacrifices on the part of any country nor a fundamental departure from national legislation in force. Adoption of the USSR proposal would be a positive contribution to the codification of the law of the sea, and would thus promote peaceful international co-operation.

39. The Conference could succeed only by reaching unanimous agreement on the breadth of the territorial sea, since without unanimity any agreement would remain a dead letter. The special feature of rules of international law regulating the relations between sovereign States was that they were created by agreement between States, and possessed legal force only by virtue of assent. Unfortunately, it was becoming apparent that participants in the Conference held opposing views about the breadth of the territorial sea, and that — as certain delegations had maintained at the thirteenth session of the General Assembly — the time was not yet ripe for devising a generally acceptable formula. If that was so, it might be wiser to wait until the question of the breadth of the territorial sea was really ready for codification.

The meeting rose at 12.15 p.m.

EIGHTEENTH MEETING

Wednesday, 6 April 1960, at 3.15 p.m.

Chairman: Mr. José A. CORREA (Ecuador)

Consideration of the questions of the breadth of the territorial sea and fishery limits in accordance with resolution 1307 (XIII) adopted by the General Assembly on 10 December 1958 *(continued)*

GENERAL DEBATE *(continued)*

Statements by Mr. Nisot (Belgium), Mr. Diallo (Guinea), Ato Goytom Petros (Ethiopia), Mr. Ponce y Carbo (Ecuador) and Mr. Liu (China)

1. Mr. NISOT (Belgium) said that the sea was *res communis*, an asset shared in common by all States on a footing of full equality. That was the view confirmed

by the International Court of Justice in its decision in the Anglo-Norwegian Fisheries case of 1951. The Court had stated:

" Although it is true that the act of delimitation is necessarily a unilateral act, because only the coastal State is competent to undertake it, the validity of the delimitation with regard to other States depends upon international law." [1]

It followed that States had no discretionary power to determine the extent of their territorial sea, nor to determine that of exclusive fishing zones outside territorial waters.

2. Belgium was primarily interested in the question of fishing, its position in that regard being very special. Its coastline was only 67 km long, and the waters neighbouring that coast were poor in fish. The Belgian industry consisted of small independent coastal fishermen who operated at no great distance from their home ports and who relied on the fish supplies in the waters off the shores of the North Sea coastal States. For that reason, his Government could not support proposals which would have the effect of extending the breadth of the exclusive fishing zone to twelve miles, whether the zone was declared territorial waters or a so-called contiguous zone. For Belgium, the acceptance of such a formula, unqualified by limitations guaranteeing the substance of the prerogatives enjoyed by Belgian fishermen, would spell ruin for its ancient fishing industry. His delegation was still hoping that the Conference would be able to work out a compromise that made allowance for that very special position.

3. Mr. DIALLO (Guinea) said that his country had not taken part in the 1958 Conference because it had at that time still been a colonial territory. When Guinea had become independent, the Government had contemplated delimiting its territorial sea unilaterally, in accordance with custom, but realizing that an international conference was being convened to attempt to solve the problem it had deferred its decision.

4. Taking into account the interests both of the international community and of the peoples for which his Government was responsible, his Government favoured a total breadth of twelve miles, embracing both the territorial sea and the contiguous zone, on the understanding that the determination of the respective breadths of the territorial sea and the contiguous zone, within that aggregate breadth of twelve miles, would be left to the discretion of the coastal State. That formula had the advantages of being reasonable, of not jeopardizing the freedom of the high seas, of safeguarding the interests of the coastal State, of being realistic in that it reflected international practice, and of allowing each State to be the sole judge of its interests within the limits so defined.

5. Some speakers had said that a formula allowing the State latitude to fix the breadth at a limit between three and twelve miles would create anarchy and if accepted by the Conference, that anarchy would receive the blessing of the law. Actually, the anarchy already existed, but if the point of view upheld by his country were adopted, the anarchical situation would be confined within well-defined limits and, as a result, be considerably diminished. The discussions had convinced him that a uniform rule would have little chance of prevailing, and that if the Conference were to succeed it could only do so on the basis of a compromise such as the twelve-mile formula.

6. With regard to " historic rights ", he said that the concept was nothing other than a manifestation of the right of the strongest and a vestige of colonialism, which it would oppose in all its forms. To perpetuate those rights would be a grave injustice to the young States that were struggling not only for political but also for economic independence.

7. Ato Goytom PETROS (Ethiopia) said that Ethiopia had not participated in the 1958 Conference, but the Government had sent the Secretary-General a brief comment [2] on the draft prepared by the International Law Commission. The present Conference's work on determining the breadth of the territorial sea and fishery limits was necessary because the Convention on the Territorial Sea and the Contiguous Zone of 1958 would be incomplete otherwise, and without such further work the 1958 Convention on the High Seas would be juridically absurd.

8. The Ethiopian delegation certainly held definite views on the breadth of the territorial sea and fishery limits, but it had not disregarded the opinions expressed in the Committee and in informal discussion. It had thought that a uniform definition of the breadth of the territorial sea could not satisfy all States, especially as their needs might often conflict. Each State, or group of States, had to safeguard its own political and economic interests and national security. Furthermore, those interests and security did not remain constant, but were always changing. That fact should be borne in mind in considering the proposals submitted by the United States (A/CONF.19/C.1/L.3) and Canada (A/CONF.19/C.1/L.4), which were alike, except that the United States proposal raised the question of historic fishing rights. Both proposals implied the right of every State to fix a maximum breadth of six miles for its territorial sea. It had been stated that that formula would apply invariably to all States in all circumstances; in his delegation's opinion, however, such a rule would conflict with customary practice and with reality. It was not flexible enough and did not leave each State free to determine the breadth of its territorial sea in accordance with its legitimate interests. The two proposals recognized only the interests of States which had established the breadth of their territorial sea up to a maximum limit of six miles, but totally disregarded the interests of States which had fixed it between six and twelve miles as, for example, Mexico had done.

9. The proponents of the six-mile limit argued that their formula was a compromise solution. Certainly the Conference's success depended on compromise, but any compromise that failed to take into account the legitimate interests of all States was not a real compromise, nor was it fair or equitable.

10. The proposal originally submitted by eight Powers at the 1958 Conference [3] had been revived in the proposals of the Soviet Union (A/CONF.19/C.1/L.1) and Mexico (A/CONF.19/C.1/L.2), which were alike, except that

[1] *I.C.J. Reports 1951*, p. 132.

[2] *Official Records of the United Nations Conference on the Law of the Sea*, vol. I, document A/CONF.13/5 and Add.1 to 4, sect. 20.

[3] *Ibid.*, vol. II, annexes, document A/CONF.13/L.34.

under the Mexican proposal the fishery limits would vary with the breadth chosen for the territorial sea. Both proposals implied the right of every State to fix the breadth of its territorial sea up to a limit of twelve nautical miles. That formula in effect affirmed a general principle established by custom. Those proposals were flexible enough and would allow every State to determine the breadth of its territorial sea in keeping with its legitimate interests.

11. Ethiopia had established, by a law enacted in 1953, a breadth of twelve nautical miles for its territorial waters, not merely because that breadth had been fashionable at the time nor simply in order to bring a vast tract of sea under its sovereign jurisdiction, but because the country's economic interests and security required that breadth. Difficulties should not be placed in the way of other States which had fixed the breadth of their territorial sea at six miles and whose future interests might require them to increase that breadth. The formula in the Mexican and Soviet Union proposals was a sensible one, because it reflected general custom and did not infringe any principle of international law. It had been said that the International Law Commission had never ruled that international law authorized the establishment of a twelve-mile limit; but that was no valid argument, because neither had it stated that the twelve-mile limit would infringe international law.

12. Certain States had voiced the fear that the right to a breadth of twelve miles would mean that shipping lanes between the coasts of two or more States would be enclosed within territorial waters and so be barred to free navigation. Surely, however, the same would happen if a six-mile limit were adopted. In the straits of Gibraltar, Bab el Mandeb and Surigao the high seas channel would not be free even under the six-mile rule. The problem could be solved only by establishing high seas channels through straits of international interest which might be within the territorial waters of two or more coastal States. Actually, he thought that article 16, paragraph 4, of the 1958 Convention on the Territorial Sea and the Contiguous Zone would afford ample protection for innocent passage through such straits. In order to allay the fears expressed, the Ethiopian delegation would consider favourably any proposal embodying the idea that two or more States the coasts of which were opposite each other would be debarred from enclosing in their territorial sea international straits which had in the past been used freely as high seas navigational routes, and that in all such cases the States concerned would fix the limits of their territorial sea in such a way that the high seas channels were broad enough to permit free navigation.

13. The Ethiopian delegation was also in favour of a twelve-mile zone for fishery limits. For many countries the coastal waters were the main source of livelihood, and even for countries which had not yet exploited them they represented a future source of prosperity. The coastal State undoubtedly had greater legitimate rights over the waters adjacent to its territory than did any other State. The United States proposal raised the idea of historic fishing rights in a six-mile belt contiguous to the territorial waters of the coastal State. That formula would create more problems than it claimed to solve. Its adoption would increase international tension, give rise to insuperable administrative problems, and would grant to a few States a perpetual privilege.

14. The Canadian proposal on fishery limits would undoubtedly create difficulties for thousands of persons and for fishing industries that depended on deep-sea fishing. Those problems could best be solved by concluding bilateral or multilateral agreements. The Ethiopian delegation would give a cordial hearing to any proposal designed to mitigate such difficulties, but would maintain its view that the most acceptable solution would be a fishing zone of twelve miles in which no State other than the coastal State would enjoy fishing rights.

15. Mr. PONCE Y CARBO (Eduador) said that the Ecuadorian delegation's position had been formally stated in the First and Third Committees of the 1958 Conference [4] and would be maintained. The International Law Commission, unable to discover any special rule of law to codify with regard to the territorial sea, had admitted the fact and had therefore recommended that any such rule should be established by an international conference. In the absence of any such rule, and amid the wide divergence of opinion, Ecuador steadfastly maintained that each State was free to fix the breadth of its territorial sea, within reasonable limits and with due regard to geographical, geological and biological factors, and to its population's economic needs and its security and defence. The divergence of views and practices showed the increasing modern trend for States, competent international bodies and the experts advising them to ensure for each State greater and more adequate control of the stretches of sea adjacent to their coasts, either by means of a broader territorial sea or by contiguous zones, fishery limits, conservation areas or continental platforms. Following that trend, the Government of Ecuador had proclaimed its paramount right to priority over all others in the exploitation of the resources of the sea near its coasts, as well as its special right, inherent in its geographical position, to conserve and protect the living resources of the sea, as was stated in footnote *l* to the table in document A/CONF.19/4. That paramount right had received tangible expression in a fisheries zone adjacent to its territorial sea, sufficiently broad to serve its essential purposes. In that connexion, he drew attention to the tripartite agreements signed in 1952 by Ecuador with Chile and Peru,[5] which had led to the establishment of the Standing Committee of the Conference for the Exploitation and Conservation of the Maritime Resources of the South Pacific.

16. The Preparatory Committee for the Codification Conference at The Hague in 1930 had advocated in its report [6] the recognition of a broader territorial sea for certain States and the acceptance of a contiguous zone, for the purposes not only of control of the teritorial waters and enforcement of customs and sanitary regulations, but also for the purpose of fishing rights.

17. Dealing with the same problem and attempting to cope in part with the matter of fishing rights which some States were claiming in a contiguous zone and simultaneously to check the trend towards an extension of

[4] *Ibid.*, vol. III, 19th meeting, and vol. V, 9th meeting.

[5] See *Laws and Regulations on the Regime of the Territorial Sea* (United Nations publication, Sales No.: 1957.V.2), pp. 723 ff.

[6] League of Nations publication, 1929.V.2.

the territorial sea for fishing purposes, the Special Rapporteur of the International Law Commission had advocated, in his second report (A/CN.4/42) [7] the protection of the resources of the high seas, and had expressed the opinion that coastal States had, in principle, a right to make regulations for the protection of the resources of the adjacent sea which, to be effective, should be applicable in a zone more extensive than territorial waters. He had proposed for that purpose that it should be declared that every coastal State was entitled to enforce in a zone of two hundred nautical miles adjacent to its territorial waters the necessary conservation regulations for the protection of the resources of the sea.

18. The International Law Commission had subsequently studied in 1951 a proposal to the effect that, pending the establishment of a body which might settle disagreements about conservation measures, coastal States would be entitled to lay down conservation regulations within the limit of two hundred sea miles, but the vote had been a tie, and the Commission had decided to mention it in its report without sponsoring it.[8]

19. In 1953, the International Law Commission had adopted draft article 2 on fisheries,[9] whereby the coastal State or States would be entitled to take part on an equal footing in any system of regulating fishing in any area situated within one hundred miles from the territorial sea, even though their nationals did not carry on fishing in the area. The Commission had considered that clause as an element in the progressive development of international law and its codification, since the rules in force provided no adequate protection to the coastal State against wasteful and predatory exploitation of fisheries by foreign nationals.

20. At the International Technical Conference on the Conservation of the Living Resources of the Sea held at Rome in 1955, it has been recognized that a coastal State had a special interest in the measures of conservation to be applied, but opinions had been divided on the question.[10] Certain participants had attempted to have that view suppressed in the final report of the Conference, but the Ecuadorian and Indian delegations had forced its inclusion. Subsequently, although contested with a vigour which had at one time endangered the very existence of the Conference, the concept of the special and preferential right of coastal States had made such headway at the 1958 Conference that it had finally become an essential bargaining element in the various compromise formulae in a well-defined legal form, that of an adjacent fishing zone with exclusive fishing rights for coastal States.

21. The special and preferential right of the coastal State had received support at the present Conference from the most diverse quarters, and the fishing zone, which had once been so greatly condemned, was now being pressed in the various proposals before the Committee. That was astonishing testimony to the way in which the highest principles of law gradually came into their own, despite obstruction from selfish interests and considerations. Some vestiges of the past remained, however, and efforts were still being made to impede the full recognition of the rights of the coastal State. On the basis of alleged historic rights, most of which simply did not exist, an attempt was being made to neutralize the exclusive rights of the coastal State by the strange concept of a right of third parties to share in that State's resources.

22. Ecuador resisted the idea that any other State had any right, far less any acquired right, to the resources in the zones of the sea adjacent to its coast, over which it had declared its paramount and special right to conserve and protect the living resources of the sea. Ecuador denied the existence of legal acts on the part of other States purporting to entitle them to those resources. Any exploitation that had been carried out, so far from being a legal act, had been an unjust and arbitrary sequestration committed in the absence of any law authorizing such fishing. Large fishing undertakings from distant countries had invested their capital in the indiscriminate predatory exploitation of the living resources of the seas adjoining their own coasts and had exhausted them. Two or three States concerned had then introduced, too late, conservation measures and had even concerted them by means of conventions in which the so-called principle of abstention had been applied to a certain extent. They had then cast their eyes towards other more fertile regions, the maritime zones of Ecuador in particular, with their great resources of tunny and other species, which Ecuador itself, although lacking in large fishery undertakings, needed for its own population. It was quite obvious that such incursions by foreign fishing vessels did not and could not constitute legal acts which could become sources of law. They had no more justification in law than would have similar acts by Ecuador if it sent its fleets into the waters of foreign States. The Ecuadorian delegation had rejected the idea at the 1958 Conference that there existed any historic fishing rights off its coasts, and still did so, on logical and legal grounds.

23. It was coming to be increasingly recognized that there were special cases or situations which required separate study, and that the State concerned should have exclusive jurisdiction over its fisheries to a suitable distance. Such was the case of the South Pacific countries, Ecuador, Chile and Peru. Ecuador had a very long coast, but almost wholly lacked a continental shelf, which, in other areas, such as in parts of the United States, stretched for as much as 300 miles. In that connexion the International Law Commission had stated in its report on its second session that it would be unjust to countries having no continental shelf if the granting of the right to exercise control and jurisdiction over the sea-bed and subsoil of the submarine areas situated outside its territorial waters with a veiw to exploring and exploiting the natural resources there were made dependent on the existence of such a shelf.[11] Ecuador, therefore, had good grounds in law for asking for the recognition of legal compensation on that point. As the Brazilian repre-

[7] Original text in French published in *Yearbook of the International Law Commission, 1951*, vol. II (United Nations publication, Sales No.: 1957.V.6, vol. II), p. 75. English translation mimeographed.

[8] *Official Records of the General Assembly, Sixth Session, Supplement No. 9*, pp. 19-20.

[9] *Ibid., Eighth Session, Supplement No. 9*, p. 17.

[10] *Report of the International Technical Conference on the Conservation of the Living Resources of the Sea* (United Nations publication, Sales No.: 1955.II.B.2), paras. 45 ff.

[11] *Official Records of the General Assembly, Fifth Session, Supplement No. 12*, para. 198.

sentative had said at the 8th meeting, owing to the diversity of geographical and other factors, no two seas were alike. Hence it was impossible to frame a single uniform rule to cover all situations. It was by reason of such considerations that Ecuador urged that a special solution be sought for special situations like its own, a solution consonant with the paramount and special right which it claimed in the conservation and protection of the living resources of the sea near its coasts.

24. Mr. LIU (China) said that, in listening to the debate, his delegation had been impressed by the general awareness of the urgency of the problem. That common will to succeed was important, for unless success was achieved at the present Conference, it would be many years before another opportunity would arise to find a solution for two of the most crucial issues of the law of the sea. If the Conference were to disperse without reaching agreement, the instruments adopted in 1958 would be left incomplete and in some ways ineffective, and the efforts of the 1958 Conference would be largely nullified. Moreover, the confusion and controversy which had prevailed with regard to the questions of the territorial sea and fishing rights would be aggravated.

25. The Chinese delegation did not maintain a rigid position with regard to the question of the breadth of the territorial sea, but was prepared to co-operate in finding a reasonable and generally acceptable and applicable formula. His Government had for many decades applied the three-mile rule because it regarded that as the rule most widely accepted by the principal users of the sea and as satisfactory from the point of view of shipping and commercial interests. It had defended that position at The Hague Conference of 1930, and still considered that, unless there was a formal agreement to the contrary, the three-mile rule could not be regarded as obsolete or be entirely discarded. In the light of the deliberations of the 1958 Conference, however, his Government was prepared to support the proposal for a six-mile territorial sea as the best compromise. The formula would ensure adequate freedom for sea and air navigation, while accommodating the wish of many States to extend control over their coastal waters; its general application would also provide stable conditions for all users of the sea. His delegation could see no advantage in a more flexible formula, and could not subscribe to the view that considerations of national security called for an extension of the territorial sea beyond the six-mile limit.

26. The idea of a contiguous fishing zone was comparatively new. If a uniform rule concerning such a zone were to be established, equity for all the interested parties must be duly taken into consideration. While he had been impressed by the force of the Canadian representative's arguments at the 5th meeting in favour of the coastal State, it was impossible to disregard the interests of States whose economy was largely dependent on fishing in distant waters.

27. Of the proposals before the Committee, only the United States proposal (A/CONF.19/C.1/L.3) provided for the recognition of historic fishing rights, and even under that plan, States fishing in distant waters were required to give up their former fishing rights in the three-to-six-mile area. In the days when the territorial sea had been limited to three miles, that area, where more fishing was carried on than in the outer six-mile zone up to the twelve-mile line, had formed part of the high seas. The creation of a six-mile territorial sea would cause all foreign States to yield their former fishing rights in the three-to-six-mile area to the coastal State. Furthermore, only States with historic rights would be allowed to fish in the outer zone.

28. It should also be borne in mind that the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas provided for co-operation in conservation measures in areas of the high seas adjacent to the coastal State. Those principles might be strengthened and incorporated in the instrument on the fishing zone, so as to provide coastal States with some added protection and to allay their fears that the productivity of the contiguous zone might be impaired by foreign fishermen. In that way, it would be possible to safeguard the interests of the coastal State without causing undue hardship to those whose livelihood depended on distant-water fishing.

29. In the search for an acceptable compromise, several new ideas had emerged. For example, the 1958 version of the United States proposal[12] had been modified by the inclusion of limits relating to the species of fish caught and the level of the catch, and the Pakistani representative had suggested at the 12th meeting a period of five to ten years during which States fishing in distant waters would be allowed gradually to change over to other types of fishing. It was to be hoped that all those ideas would be elaborated and rendered acceptable to the largest possible majority. The Chinese delegation, for its part, believed that the best solution lay in a compromise between the United States and the Canadian proposals, the differences between which could undoubtedly be bridged, in the spirit of understanding and compromise which was the key to the successful conclusion of the Conference.

The meeting rose at 4.45 p.m.

[12] *Official Records of the United Nations Conference on the Law of the Sea,* vol. II, annexes, document A/CONF.13/L.29.

NINETEENTH MEETING

Thursday, 7 April 1960, at 10.40 a.m.

Chairman: Mr. José A. CORREA (Ecuador)

Consideration of the questions of the breadth of the territorial sea and fishery limits in accordance with resolution 1307 (XIII) adopted by the General Assembly on 10 December 1958 *(continued)*

GENERAL DEBATE *(continued)*

Statements by Mr. Bouziri (Tunisia), Mr. El Bakri (Sudan), Mr. Radouilsky (Bulgaria) and Mr. Fattal (Lebanon)

1. Mr. BOUZIRI (Tunisia) said that he would confine himself to a number of conclusions, the strict accuracy of which was amply demonstrated by past experience.

2. In the first place, international practice had never been uniform either with regard to the breadth of the territorial sea or with regard to fishery limits. Every country had always been, and still was, free to fix the limits of its territorial waters in the light of its geographical, economic and other circumstances with due regard for the freedom of the high seas. But as a general rule the distance of twelve miles had served as the maximum limit for the territorial sea: that fact could be of assistance in formulating for future use a universally applicable rule of positive international law. It was on the basis of those general principles on the one hand and on that of the dictates of security on the other hand that the Tunisian Government had considered that a breadth of twelve miles for the territorial sea could be adopted. In the opinion of his delegation, that limit would help to provide the security necessary for development, especially where unarmed or insufficiently armed countries were concerned. It would give them shelter from outside interference. The Tunisian delegation was gratified to see that that view was shared by many delegations.

3. In addition, his country had serious problems and anxieties due to the fact that Tunisia was situated in the Maghreb and in Africa, unhappy lands rent by conflict.

4. He did not believe that the freedom of the high seas, the freedom of navigation or the freedom of air traffic would be impaired by the application of the twelve-mile principle, since the right of innocent passage of merchant ships was universally recognized and the freedom of air navigation was amply safeguarded. If anarchy and oppression were to be avoided, the freedom of the high seas must be subject to the limits imposed by the right and duty of the coastal State to maintain its security and defend its interests.

5. As to the argument that extension of the breadth of the territorial sea to twelve miles would entail unduly onerous expenditure by the coastal State, the latter must clearly be the sole judge of that.

6. In the opinion of the Tunisian Government, the claim to a contiguous zone in which the coastal State would enjoy exclusive fishing rights was as legitimate as the claim to a territorial sea. As a general rule, the breadth of the fishing zone should be twelve miles, always provided that that limit did not injure the multiple rights and duties which in some cases the coastal State, by the process of history, exercised over sea areas outside the twelve-mile limit. The Tunisian Government, for instance, was in no way prepared to renounce its rights or to repudiate its obligations in respect of the " historic waters " of the Gulf of Gabès as delimited by Tunisian legislation.

7. Among the reasons which militated in favour of the adoption of a breadth of twelve miles for the coastal State's exclusive fishing zone was the need to ensure the conservation and rational utilization of the resources of the sea for the benefit of that State's population. That need was particularly pressing in the case of young and under-developed countries, whose level of living was extremely low. It would be neither wise nor fair to disregard the profound hopes and vital needs of those countries, which had long been denied their independence and resources to the advantage of other countries. It would be equally unfaur to attempt to deny them the resources of the sea that were naturally theirs by reason of their geographical position, and which an unkind fate had hitherto prevented them from defending or utilizing. The Tunisian delegation did not believe that the fact that foreign fishermen had operated in the waters close to the coast of a State — a situation that was often improper — could call historic rights into being, or that that factual situation enjoyed the same degree of legitimacy as the rights which the coastal State or its nationals were entitled to assert.

8. It was true that delicate problems would probably be created for those States which would be obliged to abandon the questionable practice of fishing in waters washing the shores of other countries. But it should be remembered that the riches of the high seas were immense, and that in most cases the States that would be affected by an extension of the fisheries zone were economically strong enough to find a quick remedy to the disadvantages caused by their exclusion from the fishing grounds in question. Lastly, the Tunisian delegation was not convinced that an extension of the fisheries zone for the benefit of the coastal State would entail a substantial reduction in the world production of fish. The outcome might well be the opposite. If their rights were finally recognized and respected, the States whose waters were rich in fish stocks but who were insufficiently equipped to exploit them would not hesitate to call upon the tehnically and economically more advanced countries for help in utilizing the resources of the sea in a manner both rational and profitable to all.

9. Turning to the proposals before the Committee, he said that his delegation could not support those submitted by the United States of America (A/CONF.19/C.1/L.3) and by Canada (A/CONF.19/C.1/L.4), which did not provide the Tunisian Government with the assurance it wanted in regard to the breadth of the territorial sea. Moreover, the United States proposal regarding the fisheries zone would seriously injure the interests and restrict the rights of the coastal State.

10. On the other hand, the Tunisian delegation found ample grounds for satisfaction and hope in the terms of the proposal submitted by sixteen countries of Africa and Asia (A/CONF.19/C.1/L.6). To be honest, it would have preferred a proposal laying down a uniform breadth for the territorial sea, but it had lent its name to the proposal because it regarded it as a reasonable compromise capable of commanding general acceptance.

11. In concluding, he would draw attention to the sacrifices made by his country and many other young nations to build up their economy and satisfy their essential needs. He appealed to the representatives of those countries which had repeatedly expressed their concern at the increase in poverty throughout the world to make an honest contribution to the development of the under-developed countries, emphasizing that the first step in that direction must be to refrain from any attempt to deprive the young and under-developed countries of the necessary safeguards for their security and the resources essential to their subsistence.

Mr. Sörensen (Denmark), Vice-Chairman, took the Chair.

12. Mr. EL BAKRI (Sudan) said that, though his country had not been able to attend the first United Nations Conference on the Law of the Sea, it had followed the proceedings closely; and he was glad to have the present opportunity of participating in the work of codifying rules on matters which had previously formed the subject of fragmentary and sometimes conflicting *ad hoc* legislation.

13. Since gaining its independence, Sudan had sought to add its modest contribution to the international efforts to maintain world peace, by observing conventions and treaties as well as by accepting responsibilities imposed by conventions and treaties previously entered into on its behalf by the Administering Power.

14. Those who had described the present Conference as the third convened to codify the law of the sea, counting The Hague Codification Conference of 1930, had overlooked one of the major developments which had taken place since 1930, namely, the number of countries that had become independent and which, with their different outlook, had taken their rightful place in the international community. In considering the problem of the breadth of the territorial sea, full account must be taken of the changes in institutions and ideas that had supervened during the past thirty years, and the final solution would have to accord with the contemporary spirit of political and social progress. One great transforming feature of recent years had been the economic and social advance that had closed the gap between the different ideological camps in East and West, thereby creating a basis for peaceful co-existence. On the other hand, the fundamental discrepancy between the economically developed countries, mainly situated in the northern part of the globe, and the developing countries in the south was still a threat to peace. The main task must be to remove that inequality.

15. As a representative of one of the so-called under-developed countries, he naturally supported a twelve-mile limit for the territorial sea, because such countries needed to extend their potential natural resources and to increase their margin of security.

16. The argument that in an age of inter-continental missiles a twelve-mile territorial sea would offer no protection against aggression had been belied by certain incidents of recent years, which were still recurring. At any time countries might be menaced by tests carried out with such missiles.

17. Again, the warning that a wider territorial sea would be more difficult to patrol and supervise was hardly compatible with the spirit of co-operation and understanding so widely professed. Surely the weakness of certain countries militated in favour of extending their territorial sea, and should not be seized upon as a pretext to deprive them of the exercise of a natural right. Sudan strongly supported a twelve-mile limit though fully aware of the inherent difficulties that its application would cause: normal progress must not be hamstrung by temporary technical difficulties easily surmountable by recourse to modern techniques, and given international co-operation.

18. Certain delegations had made great play with the objection that a twelve-mile limit would interfere with the practice of fishing in distant waters which would become the territorial seas of other countries. Such practices should not be recognized as a right. Nevertheless, his delegation might support a solution providing for a transition period, at the end of which such fishing would have to cease. A solution of that kind could be negotiated under bilateral or multilateral agreements, and need not necessarily be embodied in an international instrument, which should be confined to issues of principle.

19. It was his Government's policy to welcome cordially any friendly national or private enterprise wishing to establish a large-scale fishing industry on the Sudanese coast of the Red Sea, since any such initiative, provided it was compatible with Sudanese municipal law and local interests, could only contribute to the prosperity of the country and to that of the world at large.

20. Fears that a twelve-mile limit would be excessive were unfounded, since the right of innocent passage was safeguarded in section III of the Convention on the Territorial Sea and the Contiguous Zone adopted in 1958. Surely, with all States seeking to work together in harmony, the prerogative of innocent passage would not be abused. Though his own country and others in an analagous situation might, since their navies were comparatively very small, be considered to be less interested in the freedom of navigation in that part of the high seas which they regarded as part of their territorial sea, yet they attached equal importance to the right of innocent passage, and could only assure the great maritime Powers that they would do everything possible to uphold that most important rule of international law. That was the best guarantee that the small nations in process of development could offer to the large developed countries, which seemed afraid of them.

21. Mr. RADOUILSKY (Bulgaria) wished to present his delegation's views on the proposals submitted by the United States of America (A/CONF.19/C.1/L.3) and Canada (A/CONF.19/C.1/L.4). Both proposals rested on the principle that all States were entitled to fix the breadth of their territorial sea up to a maximum limit of six nautical miles, but, as he had pointed out in his general statement at the Committee's 4th meeting, both had been prompted essentially by military, not economic, considerations. The Bulgarian delegation believed, like many others, that a six-mile territorial sea was inadequate for coastal defence, and that it would offer substantial advantages to States with powerful navies. It was principally for those reasons that the two proposals were unacceptable to his delegation.

22. His main concern, however, was with the question of so-called historic rights. By article 2 of the United States proposal, the coastal State would have exclusive fishing rights in what was referred to as the " outer zone ", extending from the outer limit of its territorial sea to a maximum distance of twelve miles from the baseline, yet that " exclusive right " was virtually nullified by article 3, whereby any State whose vessels had fished in that zone during the period of five years immediately preceding 1 January 1958 might continue to do so on the same scale and for the same groups of species. Although the concept of " historic rights " in the " outer zone " was meaningless, he would use the term, for the purposes of his argument, in the sense imparted to it

by its originators. The primary object of the proclamation of those rights was to preserve and perpetuate existing privileges enjoyed by countries with large fishing fleets operating far from their own shores to the detriment of the coastal population of other States. Those privileges did not merely consist in the right to fish in the " outer zone "; they amounted in practice to virtual domination of large sea areas which were particularly rich in fish stocks.

23. He recalled that at the first United Nations Conference on the Law of the Sea the Canadian representative had interpreted the United States reservation as allowing any State which, over a period of five years, had regularly sent a few fishing boats to points within twelve miles of another State's coast, to continue to exploit in perpetuity not merely the same specific areas, but the whole " major body of water " concerned,[1] with the result that any State agreeing to the United States proposal would be signing away for all time rights to protect its fishermen in any area where foreigners had fished in the past. Although the United States proposal provided for certain limitations on such fishing by foreign States, the criticism of the Canadian representative was still cogent and justified.

24. As other speakers had pointed out, no accurate information was available about the species and quantities of fish caught in the " outer zone ". In any case, with modern fishing fleets and technical methods the average catch over a period of five years might well be the maximum possible. Thus, under the United States proposal, countries with large distant-water fishing fleets would be given every opportunity of taking maximal catches. That possibility assumed particular significance when viewed in the light of possible future depletion of fish and other living resources of the sea given the effectiveness of modern methods.

25. Moreover, the International Law Commission had stated, in paragraph 3 of its commentary on the articles on the conservation of the living resources of the high seas, that the existing law provided no adequate protection of marine fauna against waste or extermination, and that the resulting position constituted, in the first instance, a danger to the world's food supply.[2] But it was the coastal State that would suffer the consequences of any decline in fish stocks if a foreign fishing State were allowed a constant quota.

26. In cases where not one but several States enjoyed " historic rights ", it was quite conceivable that the entire catch in a coastal State's " outer zone " might go to such States, the coastal State being left with a purely theoretical " exclusive right " to fish in its own " outer zone ".

27. A further undesirable consequence of acceptance of the concept of " historic rights " had also been mentioned by the Canadian representative at the first Conference when he had stated that, if the United States proposal were adopted, new nations would be helpless to protect their own waters and would never acquire fishing rights elsewhere.[3] The concept of " historic rights " in relation to fishing was the product of an invidious tendency at the first Conference to elevate the dominant position of technically advanced countries into a system of legally sanctioned privileges — the same tendency as had given rise to the so-called " principle of abstention " and a certain conception of the rights of new nations. If such privileges were given legal sanction, the new and technically under-developed countries would be deprived of their right to utilize the natural wealth of their coastal waters.

28. He refuted the contention that the right of a non-coastal State to fish in the " outer zone " of another State could derive from the circumstance that the State in question had fished in that zone during the " base period ". According to some authorities, the institution of State servitude had application in international law, but, while State territory could be subject to servitude, the high seas, as *res communis*, could not. The " outer zone " was part of the high seas, yet recognition of " historic rights " there would entail recognition of that zone as the territory of the coastal State. Nor could " historic rights " be upheld on grounds of long usage, for the five-year " base period " hardly accorded with the concept of long usage recognized by international law.

29. Although in theory the coastal State would enjoy exclusive fishing rights in its outer zone, article 4 of the United States proposal provided that the foreign State that was entitled to fish in that zone should take such measures as were necessary to ensure that its vessels complied with the provisions of the convention envisaged laying upon it merely the obligation to notify the coastal State concerned of such measures as it might take. That proved that the rights of the foreign State took precedence. The provision for the settlement of disputes as set out in the annex to the United States proposal was equally unsatisfactory.

30. Under any system of municipal jurisdiction the claimant to a disputed right was the plaintiff, whereas the owner of the property was the defendant who could not be deprived of the property until the dispute had been settled. If those principles were applied *mutatis mutandis*, the coastal State would be the defendant and the non-coastal State would not be able to fish until the dispute had been settled. However, in section I of the annex to the United States proposal the existence of " historic rights " was assumed and the coastal State had to be the plaintiff in the proceedings and to prove that the other State had no such " historic rights ". Furthermore, the rule in that section did not allow the coastal State to prevent the other State from exercising the disputed right it claimed, stipulating as it did that the latter might continue to exercise the disputed right pending a settlement. The rule in section III was based on a similar premise, and the rule in section II also worked to the advantage of non-coastal States.

31. The United States proposal was therefore nothing but a draft for an inequitable multilateral agreement under which States enjoying so-called " historic rights " and possessing large fishing fleets would be accorded

[1] *Official Records of the United Nations Conference on the Law of the Sea*, vol. III, 54th meeting, para. 5.

[2] *Official Records of the General Assembly, Eleventh Session, Supplement No. 9*, p. 32.

[3] *Official Records of the United Nations Conference on the Law of the Sea*, vol. II 14th plenary meeting, para. 29.

privileges, hitherto unknown in international law, to the detriment of coastal States. It was in no way a compromise, and the Bulgarian delegation could not support it.

32. Mr. FATTAL (Lebanon) wished first to pay a tribute to the memory of Professor Gilbert Gidel, whose life had been devoted to scientific research and teaching, especially to the study of the law of the sea. His works on the subject were authoritative, and his name and opinions had frequently been quoted at the first Conference in 1958 by speakers of the most divergent views. Jurisprudence had suffered a severe loss by the death of Professor Gidel.

33. The second United Nations Conference on the Law of the Sea was a speculative endeavour in the sense that it had been instructed by the General Assembly of the United Nations to seek, as the breadth of the territorial sea and the fishing zone, a distance acceptable to all. There had been no fresh development since 1958, except in so far as the proposals submitted by the Canadian and United States Governments had won a few additional supporters. That being so, he would remind the Conference of the position taken by the Lebanese delegation in 1958. It had then been one of the first to advocate a solution which gave each State a certain freedom both as to area and as to time. With regard to the former, his delegation had advocated that the State should be free to determine the extent of its territorial sea at some point between a minimum of three and a maximum of twelve miles. To achieve some degree of uniformity, it might have been provided that the breadth should be fixed, for example, at three, six, nine or twelve miles — or one, three or four marine leagues — to the exclusion of any other figure. So far as time was concerned, the State would have been empowered, within the limits indicated, to change the extent of its territorial sea if the breadth adopted seemed to it to be harmful to its interests either in peacetime or in the case of a breach of the peace.

34. The solution had met with opposition, and its opponents were far from having exhausted their arguments. It had been said that uniformity was the essential feature of a rule of law. But the time was hardly ripe to speak of the uniformity, unity and perfection of the rule of law when the Conference was laboriously trying to establish a compromise that would be just acceptable generally. Recalling the maxim "*summum jus, summa injuria*", he emphasized that the strict letter of the law was very close to injustice, and that international law should be regarded not as a technique, but as a science in the service of man. In that field, there were dangers in uniformity.

35. Advocating the adoption of a pluralist solution, he stressed that international society would be tolerable, generous and tolerant only if it refrained from establishing inflexible rules. Many examples of legal pluralism were to be found in municipal systems of law, and his own country had set up that concept as a constitutional principle. Furthermore, several speakers had already come out in favour of the pluralist principle, in particular the Brazilian representative, who had referred to the special situation of Peru, Iceland and the Philippines. To quote a happy expression of Mr. Amado's, it could be said that no two seas were alike. Pluralism was inherent in nature, and the eminent expert Mr. François had not failed to say so in his report to the Second Committee of the Codification Conference held at The Hague in 1930, in which he had written that the differences of opinion concerning the breadth of the territorial sea "were to a great extent the result of the varying geographical and economic conditions in different States and parts of the world".[4] In that connexion, Mr. Fattal pointed out that the geographical configuration of the earth had not changed during the last thirty years, and that the economic condition of many under-developed countries was even more precarious at the present time than when Mr. François had written the report in question.

36. Many speakers had extolled the freedom of the seas for fishing and navigation. But he would point out that unless that freedom was organized it might well be exploited to the detriment of the poor countries.

37. Moreover, those delegations which had submitted proposals had only too frequently resorted to historical arguments. Historical considerations should carry the least possible weight with the Conference, which was a legislative assembly: mutual respect for the interests involved should be its guiding principle. The Committee had heard long disquisitions on acquired rights, wrongly described as historic rights, and attempts had been made to set them up against the rights of the coastal State. A quick review of the situation was enough to show that among those who advocated a three-mile or a six-mile breadth for the territorial sea there were poor countries which were fighting for the conservation of their marine resources as well as rich and powerful States. Similarly, not all the partisans of a twelve-mile territorial sea were under-developed countries; they included some wealthy States which were similarly seeking to conserve and increase their resources. Any suggestion that the question was but one aspect of the war between capitalism and imperialism on the one side and the proletariat on the other was therefore an undue simplification. The Lebanese delegation accordingly took the view that an abrupt change in the *de facto* and *de jure* situations was undesirable. In order to avoid discouraging business initiative and the technical know-how of the wealthier countries, and to prevent unemployment amongst their technical experts, a transition period should be provided for; such a period was also necessary to allow the under-developed coastal States to prepare themselves to take over their functions and to make up for lost time, perhaps through technical assistance from other States which had long been profitably exploiting the living resources of their waters.

38. There were certain difficulties which made the possibility of agreement problematical. In 1958, a Convention on the Territorial Sea and the Contiguous Zone had been concluded which comprised all the rules relating to the territorial sea except that pertaining to the determination of its breadth. If the present Conference succeeded in concluding a convention on the breadth of the territorial sea, there would be two different instruments which could be signed and ratified independently. For example, one State might sign and ratify the convention on the breadth of the territorial sea while at the

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[4] League of Nations publication, 1930.V.16, p. 210.

same time rejecting the provisions relating to innocent passage or the delimitation of baselines, thus creating an absurd situation. It ought to have been possible to review the 1958 Convention. As the Saudi Arabian representative had pointed out at the 1st meeting, there was a close interdependence between the breadth of the territorial sea and the other provisions governing it. Negotiation would perhaps have been possible had the present Conference been authorized to revise certain provisions of the 1958 Convention. For example, had the coastal State been entitled, within its contiguous zone, to take the control measures necessary to avert threats to its security by foreign warships it would have doubtless been possible to reconcile opposite viewpoints to some extent. The Preparatory Committee of the Codification Conference of 1930 had foreseen just such a possibility, and in that connexion Professor Gidel had pointed out that the claim to a special coastal security zone could not be considered as an unfounded innovation in international practice. Moreover, he had been a sound prophet when he had pointed out that a general agreement on the breadth of the territorial sea could be reached only by means of the contiguous zone.

39. In concluding, he warned the Conference of the situation that might result from the adoption by the requisite two-thirds majority of a proposal for the introduction of a six-mile limit for the territorial sea with a further six miles of contiguous zone. There would be an irreducible nucleus of about thirty States scattered over the world, representing about one-third of its population, that would remain ardently attached to the twelve-mile limit. There would thus be a schism in the international law of the sea which would be perpetuated in international instruments, and under the pretext of ensuring the unity and uniformity of a rule of law the Conference would have succeeded in shattering the very unity of international law itself.

The meeting rose at noon.

TWENTIETH MEETING

Thursday, 7 April 1960, at 3.15 p.m.

Chairman: Mr. José A. CORREA (Ecuador)

Consideration of the questions of the breadth of the territorial sea and fishery limits in accordance with resolution 1307 (XIII) adopted by the General Assembly on 10 December 1958 *(continued)*

GENERAL DEBATE *(continued)*

Statements by Mr. Koretsky (Ukrainian Soviet Socialist Republic), Mr. Gros (France), Mr. Shukairy (Saudi Arabia) and Mr. García Robles (Mexico)

1. Mr. KORETSKY (Ukrainian Soviet Socialist Republic) said that there would have been no difficulty in reaching agreement on the breadth of the territorial sea if all the participants in the Conference had based their positions on the need to embody in conventions the progressively developing practice of States. No one was now proposing a return to the three-mile limit, which had been described as obsolete by a number of speakers. Already in 1930, Professor Giannini had said that the three-mile limit could no longer be justified and, while stating that the six-mile limit seemed to fill the needs of the time, had added that the future development of the breadth of the territorial sea could not be foreseen. The International Law Commission had taken a similar view, which had been confirmed by the overwhelming majority of delegations to the 1958 Conference.

2. The controversy at the present Conference seemed to relate mainly to two sets of proposals. On the one hand there was the clear and easily applicable proposal of the USSR (A/CONF.19/C.1/L.1), providing for a limit of twelve nautical miles, which coincided with the basic intention of the proposal submitted by Mexico (A/CONF. 19/C.1/L.2) and the sixteen-Power proposal (A/CONF. 19/C.1/L.6). The USSR proposal took into account developments in state practice and the national interests of all States, by ensuring their political and economic security and their free and exclusive utilization of the resources of their own seas. On the other, there were the proposals which fixed the breadth of the territorial sea at six miles. The latter, submitted by the United States (A/CONF.19/C.1/L.3) and Canada (A/CONF.19/C. 1/L.4), could not be regarded as anything other than half-measures, since they failed to take actual developments into account. Only eleven States had fixed the breadth of their territorial sea at six miles, whereas seventeen States had enacted legislation establishing the limit at twelve miles, and more would undoubtedly enact like legislation in the near future. From the realistic and practical point of view, it was obviously impossible by a mere vote to impose upon Governments a breadth of territorial sea other than that which they had established for themselves: such a course would be contrary to the principle of territorial inviolability. The only realistic approach towards establishing a legal rule, embodied in a convention, was to strive towards unanimity. The fixing of the territorial limits of the State and, consequently, its territorial sovereignty, could not be the subject of bargaining. The Conference's true and only task was to fix the maximum breadth of the territorial sea, as it had evolved historically, and the maximum breadth could not, of course, be less than the limit already fixed by a number of States. The establishment of such a limit in a binding convention had the further advantage of not forcing any State to reduce the boundaries of its territorial waters. Moreover, such a rule would in no way oblige all States to fix the same limits, and any country wishing to retain a three-mile or six-mile limit would be free to do so. It would be for the legislative bodies of each country to take the relevant decision, within the limit established by international law in accordance with historical developments. The Cambodian representative had rightly said at the 12th meeting that States which had already declared a breadth of twelve nautical miles or more were unlikely to ratify a convention which would oblige them to revert to a narrower breadth; legal rules must be based on realities and not on abstract principles that were not unanimously accepted.

3. Turning to the objections to the USSR proposal raised during the debate, he said he could not agree with the United States and Australian representatives, who argued that the rule concerning the breadth of the territorial sea was determined by the principle of the freedom of the high seas. In the first place, that argument was illogical; it was, on the contrary, the extent of the high seas and the limits of the freedom of the sea which were determined by the limit of the territorial sea. Article 1 of the 1958 Convention on the High Seas defined the high seas as " all parts of the sea that are not included in the territorial sea or in the internal waters of a State ". Furthermore, the argument was historically incorrect, for the concept of the territorial sea had been evolved by the coastal States in reaction to incursions of the States which had gained mastery of the seas. In the era of the scramble for colonies, it had been the practice of the great maritime Powers to seize the coasts of countries which they wished to invade and to penetrate into the hinterland. Anxious to keep foreign ships at a " respectful distance ", which had then been the distance of a cannon-shot, from their shores, the coastal States had sought to fix their territorial seas at a breadth which would ensure their security and enable them freely to exploit the resources of their own seas. In times of revolutionary and liberation movements, one of the first moves of fighters for freedom had been to establish adequate limits for the territorial sea; the " British Seas " in Cromwell's time had been defined " to the largest extent of these seas ", and the problem of the territorial sea had arisen in the early days of the United States and during the French revolution. The young Soviet State, embattled after the October revolution of 1917, had reaffirmed the pre-existing twelve-mile limit. It was perfectly natural for newly independent States to tend to increase their territorial sea to twelve nautical miles, in order to fend off depredations by foreign warships and fishing fleets and the diversionist activities of reactionary forces.

4. The countries which were trying to retain their hold over former colonial territories were inventing arguments against the twelve-mile limit. They asserted that that limit would hamper freedom of navigation; but so long as that freedom was not turned into an instrument of penetration into foreign waters and territories, the right of innocent passage through territorial waters fully secured the interests of international shipping which, incidentally, owing to modern technical advances, no longer needed to keep close in-shore. Another argument cited against the twelve-mile limit was that of the risk of interference by the coastal State with international navigation; those who used that argument, however, ignored the fact that certain States had not hesitated to impede the passage of foreign merchant vessels in areas far beyond the limits of territorial waters. It had also been said that the broader the territorial sea, the greater would be the expenses incurred by shipping, for ships would have to anchor farther out at sea at greater depth; actually, however, the depth of the sea did not always depend on the distance from the shore, and anchors would be used by a ship in transit in exceptional circumstances only, for the right of innocent passage did not imply the right to stop in territorial waters. The United States representative had gone into details concerning the height at which a navigator must stand to see the shore from a distance of twelve miles; but in the early days of navigation, when there had been no technical means of determining distance from the shore, the distance of visibility had been determined at 14 to 28 miles. It had also been claimed that a twelve-mile territorial sea would involve the coastal State in considerable expense in the discharge of its duties under the 1958 Convention on the Territorial Sea and the Contiguous Zone. It should be noted, however, that article 16 of that Convention merely obliged that State not to hamper innocent passage of foreign merchant vessels through the territorial sea and to give appropriate publicity to any dangers to navigation in that sea of which it had knowledge.

5. It was obvious to all unprejudiced persons that a wider territorial sea was essential for the safety of the coastal State. At various times, the United States itself had attempted to establish a security zone of 300 miles for the American continent; but the United States representative was now asserting that a wide territorial sea was unnecessary for the security of peace-loving States. The Canadian representative had argued that a narrower territorial sea would best ensure the security of coastal States, because control could be exercised more effectively. Those arguments could not convince States which were anxious to preserve their independence and had no aggressive intentions against other countries. They knew that a narrowing of their territorial waters would facilitate access to their shores by hostile warships and military aircraft and would open the door to military and economic penetration by other countries. The head of the United States delegation had spoken more frankly at a recent meeting of the United States Senate Foreign Relations Committee, where he had stated that his country wished the territorial seas to be narrowed as far as possible, in order to ensure the maximum possibility of deployment, transit and navigation in the open seas, free from the jurisdiction and control of individual States. The unfounded allegations concerning so-called activities of Soviet submarines could convince no one, and merely served as a proof of the weakness of the position of those who advanced them. The Conference should be thinking not in terms of war, but in terms of peaceful co-existence. The march of time could not be stopped and the significance of the territorial sea as a safety barrier was being increasingly widely recognized, particularly by nations which had thrown off the yoke of political and economic dependence and were determined to strengthen their sovereignty and security.

6. If the legitimate need of States for a twelve-mile territorial sea were accepted, other connected problems, including that of the contiguous fishing zone, could be easily solved. While the development of technical fishing methods had created new possibilities for the rational exploitation of the resources of the sea, large monopolies were using their well-equipped fishing fleets to cause depredations of the fish resources near the shores of foreign countries, where fish usually abounded. The coastal States could best be protected against such forays by the extension of their territorial sea to twelve miles. A strange situation had, however, arisen: a number of States were prepared to agree to a twelve-mile fishing zone, but refused to accept a twelve-mile limit for the territorial sea.

7. At the 1958 Conference, his delegation had drawn attention to the fact that, juridically, the contiguous zone was merely a prolongation of the territorial sea. The close connexion between the territorial sea and the contiguous zone was not a new concept; it had been argued at the 1930 Conference at The Hague that there was no essential juridical difference between the two areas. It might be said that the same legal characteristics were attached explicitly to territorial waters, and implicitly to the contiguous zone; that was clear from the accumulation of the powers which the coastal States traditionally exercised in the contiguous zone. Originally, that zone had been established in answer to the policy of the great maritime Powers of trying to confine the coastal States to a narrow limit of territorial waters; it was, in fact, an indirect way of extending the breadth of the territorial sea. Exclusive fishing zones should similarly be regarded as an integral part of the territorial sea.

8. In the past, the great maritime Powers had recognized contiguous zones to the extent only to which it was expedient for them to recognize them, and had resisted the recognition of fishing zones outside territorial waters. At the 1930 Conference, the representatives of Portugal and Iceland had argued in favour of a broader territorial sea with a view to protecting coastal fishing industries and securing the recognition of fishing zones. That attempt had been thwarted, and subsequent codifications excluded fishing zones from the lists of recognized contiguous zones.

9. Nevertheless, the connexion between fishing zones and territorial waters would become clearer if one looked at other types of contiguous zone. Whereas, for example, customs, sanitary and fiscal zones might be regarded as manifestations of the administrative and police functions of the State, fishing zones were connected with territorial sovereignty, for in them the nationals of the coastal State had the right to exploit the resources of the sea. Just as the usufruct of the earth was connected with the right to territory, so exclusive fishing rights were connected with a State's rights in its territorial sea. In that connexion, he pointed out that even under the Canadian proposal (A/CONF.19/C.1/L.4), a State entitled to establish a contiguous fishing zone would have in it " the same rights in respect of fishing and the exploitation of the living resources of the sea as it has in its territorial sea ".

10. Accordingly, the best way on affirming exclusive fishing rights would be to extend the breadth of the territorial sea, since the fishing industries of the coastal State would then be fully protected by all the consequential sovereign rights. Such a solution would not, however, suit the policies of certain States, which were trying to reduce the breadth of the territorial sea as far as possible, in order to achieve the greatest possible manoeuvring space for their warships and military aircraft. Thus, they were prepared to " compromise " by retaining their so-called historic fishing rights in foreign waters. Clearly, their willingness to agree to provisions extending fishing zones was motivated, not by economic interest, but mainly by military considerations. That was why they were trying to separate the fishing zone from the territorial sea, with its characteristic sovereignty. It was significant that the fishing zone was called " the outer zone " in the United States proposal (A/CONF.19/C.1/L.3), and although that semantic conceit could clearly not change the real nature of exclusive fishing rights, it was a pity that States like Canada and Iceland, which were deeply concerned with the protection of their fishing, had followed the idea of a separation between the two belts of sea. Instead of using the best legal means of protecting their national interests by insisting on an extension of their territorial sea to twelve miles, those delegations were, without any doctrinal foundation, differentiating between the fishing zone and the territorial sea, and were thus weakening their chances of securing exclusive fishing rights.

11. Mr. GROS (France) said that his delegation supported the United States proposal (A/CONF.19/C.1/L.3) for the reasons it had explained in 1958.[1] He would review the present situation, commenting first on the questions of law and secondly on the economic and technical problems.

12. With regard to the questions of law, he protested against inaccurate conclusions drawn from quotations taken out of context from the works of such eminent jurists as Anzilotti and Gidel. He warmly thanked the representative of Lebanon for the tribute he had paid to Professor Gidel. Out of respect for the memory of Professor Gidel, Mr. Gros wished to rectify some of the inaccurate statements which had been made. To begin with, it was not the case that every State was free to determine a breadth of up to twelve miles for its territorial sea. That assertion could easily be demolished by reference, on the one hand, to the ruling of the International Court of Justice in the Anglo-Norwegian Fisheries case in 1951, to the effect that the delimitation of sea areas always had an international aspect and could not be dependent merely on the will of the coastal State,[2] and, on the other, to the report of the International Law Commission on the work of its eighth session. The Commission stated that, since several States had established a breadth of between three and twelve miles, while others were not prepared to recognize such extensions, it had been unable to take a decision on the subject.[3] That meant that a breadth exceeding three miles was lawful only with respect to countries which agreed to it but not with respect to others. Hence, it had to be recognized, firstly, that the three-mile rule, far from being dead, was still the rule applied by many States and was the only rule that did not need express recognition by the international community; and secondly, that any other limit was valid internationally to the extent only to which it was expressly or tacitly acknowledged by the other States.

13. Another error which was often made was to claim that there was freedom of passage in the air-space above the territorial sea; Mr. Gros read article 9 of the 1944 Convention on International Civil Aviation which allowed any State to establish prohibited areas in the interests solely of security or public safety.

[1] *Official Records of the United Nations Conference on the Law of the Sea*, vol. III, 8th, 37th and 55th meetings; vol. II, 14th plenary meeting.

[2] *I.C.J. Reports 1951*, p. 132.

[3] *Official Records of the General Assembly, Eleventh Session, Supplement No. 9*, p. 13. Commentary on article 3, para. 7.

14. The representative of Ceylon had asked at the 15th meeting what were the precise terms of treaties concluded with Powers, including France, which upheld the three-mile rule; certain of those treaties, he had said, seemed to specify territorial waters having a breadth of nine miles. In reply, Mr. Gros cited article 15 of the Treaty of 1886 between France and Mexico, under which the rule of twenty kilometres, the breadth which the parties regarded as the limit of their territorial sovereignty, would be applied only for the purposes of exercising customs supervision and would not be applied in any way in any other question of international maritime law.[4]

15. Furthermore, positive law, as it stood at present, recognized no contiguous zone for the purposes of fishing. According to Gidel,[5] it was only through the application of international agreements that the coastal State could take measures beyond the limits of its territorial sea to ensure respect for its fisheries interests. The coastal State accordingly had no fishing rights, whether exclusive, preferential or even special, beyond its territorial sea.

16. That was the present position in positive law; it was possible, it was true, to modify it, but only by the normal process of international law, in other words by agreement. The advocates of the contiguous fishing zone themselves acknowledged that, as was proved, in particular, by an official article published in Canada,[6] in which it was specifically stated that what was required was the formulation of a new rule of international law.

17. He felt bound to point out that the expression " historic rights " meant nothing. The only thing historic about it was the coastal States' eagerness to colonize the high seas. The States which practised distant fishing fished in the high seas and it was incorrect to speak of " historic rights " in that connexion.

18. Dealing with the economic and technical aspects, he said it was an incontrovertible fact that certain States depended entirely or almost entirely on fishing. Theirs was a special situation, which required separate treatment. On the other hand, some of the States which urged a twelve-mile fishery limit did not claim that they really needed it to feed their people, and many of them did not engage in fishing themselves; they merely wished to debar others from fishing in those waters except under licence. What was the use of going to Rome and at the FAO Conference seeking the best methods of co-operation towards a better supply of food for all, when what was proposed at the present Conference revealed a dogmatic hostility which was unreasonable and economically injustifiable, since it was detrimental to an effective organization of fishing and contrary to the idea of peaceful coexistence. In France there were 50,000 small fishermen whose business interest could hardly be called " monopolist ", and whose level of living, like that of millions of consumers, was at stake.

19. The French delegation was, however, giving an earnest of its spirit of compromise in supporting the United States proposal. It would be prepared to accept the new six-mile rule, abandoning its traditional three-mile rule and losing the right to fish freely in the belt contained between the three-mile and six-mile lines off foreign coasts. It would recognize as a new rule of international law the new principle of a contiguous fishing zone in which coastal States would enjoy preferential, but not exclusive fishing rights. It would accept the idea that the principle of the freedom of the seas — which gave to all in the past an indefeasible right — should in the future be qualified by restrictions, which would benefit the coastal State, concerning the species of fish which could be taken and the amount of the annual catch.

20. The French delegation had shown a similar spirit of compromise on the earlier occasion when it had accepted the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas, which had established in article 7 a new rule of international law: the right of the coastal State to make regulations for the conservation of the fish resources in high seas areas adjacent to the territorial sea.

21. It had been said that it would be difficult or impossible to enforce limitations affecting fishing by foreign fishermen in the coastal belt between the six-mile and the twelve-mile lines. In answer to that argument he would say that, for example, the dates of the departure and arrival of the thirty-three French fishing boats operating in the waters off Canada were known and so was the size of the catch. In reality, only one of two possible situations could arise: either, as in the case of the French fishing fleet to which he had referred, the fishing was organized and statistics concerning it were available, such as those published by the International Commission for the Northwest Atlantic Fisheries; or else the fishing off the shores of a coastal State was sporadic, and hence of minor importance, in which case the two States should have no difficulty in working out an agreement, the fishing State being unable to make a claim that its annual catch was high since there were no statistics and the catch had been made by only a few boats.

22. The advantage of the United States proposal was that it gave equitable treatment to the population of the coastal State and to the seafarers of fishing States. The realities which should be borne in mind were the steady growth of the world's population and its ever-increasing needs for food. It was bad to swim against the current, but worse to mistake the current's direction. In the view of the French delegation the right solution would be not to extend proprietary rights in parts of the sea — a course which was unnecessary to satisfy the needs of the State and which would harm the international community — but to promote the development of the fishing industries in the interests of all peoples.

23. Mr. SHUKAIRY (Saudi Arabia) said that, in taking its historic decision on the proposals before it, the Conference, while keeping in mind the interests of the international community, should not betray national interests, particularly those of the new States. The proposals should be examined to see how far they tended towards the progressive development of international law, and how far they struck a balance between

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[4] *Laws and Regulations on the Régime of the Territorial Sea* (United Nations publication, Sales No.: 1957.V.2), p. 756.

[5] Gilbert Gidel, *Le droit international public de la mer*, vol. III, *La mer territoriale et la zone contiguë* (Paris, Librairie du Recueil Sirey, 1934), p. 473.

[6] *External Affairs*, Monthly Bulletin of the Department of External Affairs, Canada, vol. XII, No. 1, January 1960, pp. 439-440.

national and international interests. Opinion in the Conference was divided between those who supported a six-mile limit and those who supported a twelve-mile limit for the territorial sea. If both sides refused to give way it would be a triumph for no one and a defeat for all. Supporters of the twelve-mile rule, as well as those who favoured the six-mile rule, should keep an open mind and be prepared to yield to reason, logic and common sense.

24. In introducing the proposal of the United States (A/CONF.19/C.1/L.3), that country's representative had stressed the difficulties in regard to visibility, anchorage and air and sea navigation that were bound to arise if the territorial sea were to be extended to twelve miles. Those difficulties were not exclusive to a twelve-mile limit, nor were they inherent in it. The United States objections applied with equal validity to the six-mile limit. At any point off the coast the meteorological changes and the geographical configuration created the same universal hazards. Evidence of that fact, should it be needed, was to be found in the great network of navigational aids established even within the three-mile limit.

25. Every phase of human progress had brought in its wake many problems which had at times appeared, on the surface, to be insuperable. Innovation of any kind necessarily caused hardship and sacrifice. The industrial revolution, for example, had not been without adverse social and economic effects, yet it had never been advocated that industrial progress should be halted. It was no argument to suggest that, because of certain difficulties, the use of the territorial sea should not be expanded and that the exploitation of its resources should not be extended. On the contrary, having increased their scientific knowledge, the coastal States should not be prevented from using their coastal waters up to twelve miles in their best interests — to feed their people, to raise standards of living and to alleviate conditions of misery, disease and poverty all over the world. The financial and technical burden to which the United States representative had alluded need not be borne by every State. Each State could choose, in accordance with necessity and capacity, to fix the breadth of its territorial sea at any point up to twelve miles, and had the right to change, from time to time, its delimitation within that maximum. The twelve-mile limitation was neither mandatory nor immediate, but the right to such a limit should become part of the law of nations.

26. The United States proposal had been described as a departure from the traditional three-mile rule and it had been said that, should it fail to command the necessary majority, all the supporters of that rule would revert to their old positions. The Conference could not allow itself to be forced into a retrograde step. It had been proved at the 1958 Conference that the three-mile rule no longer existed. At no time had it been universally recognized or even tacitly accepted. Since then, further study of state practice, case-law and treaty precedents had confirmed that never since the concept of the territorial sea had emerged had there been a generally accepted rule of international law delimiting its breadth. The three-mile limit was often referred to as a minimum, but there were other limits of sixty miles, one hundred miles, two, three or four leagues; and it was significant that the various limitations were frequently ignored by their very exponents. So chaotic had the situation been, in fact, that already in the eighteenth century the Italian jurist Azuni had proposed that the maritime Powers should hold a conference and conclude a treaty on the subject.

27. Replying to the representative of France, he referred to a number of instances, from the seventeenth century onwards, in which the opinions of eminent French jurists or the actions of the French Government had admitted or advocated varying limits of more than three miles.

28. In reply to the representative of Italy, who had said that Anzilotti's views did not support the conclusions put forward by the Saudi Arabian delegation at the 1st meeting of the Committee, he referred to Oppenheim's statement that " Anzilotti . . . considers that no rule of international law has been developed to take the place of the abandoned 'shore batteries' rule ".[7]

29. The United Kingdom representative had said that the holding of the present Conference would be meaningless if international law already recognized a twelve-mile territorial sea. That contention could, however, be countered by the argument that, had the three-mile limit been recognized law, the Conference would not in that event have been convened. The representative of the United States had stated that the United States adhered, and had always adhered, to the three-mile limit, and for that reason would continue to do so if no agreement was reached by the Conference. Should that statement be well-substantiated, it would no doubt carry great weight in support of the United States proposal. Examples of official declarations and state practice taken from the United States archives revealed, however, that the three-mile limit was only one of many measurements of the breadth of the territorial sea, and that on the strength of those United States official documents there was not, and never had been, any fixed breadth of the territorial sea.

30. The United States representative had said that the three-mile limit had been adopted by the United States of America in 1791. It had, in fact, been in 1793 that Thomas Jefferson, addressing himself to the British and French Ministers,[8] had suggested that before it was finally decided to what distance from its sea shores the territorial protection of the United States should be exercised, it would be " proper to enter into friendly conferences and explanations with the powers chiefly interested in the navigation of the seas on our coasts " and found it necessary in the meantime to fix a distance provisionally, stating that " very different opinions and claims " had been advanced on that subject. Jefferson had said that the greatest distance to which " any respectable assent among nations " had been given had been " the extent of the human sight, estimated at upwards of twenty miles "; and that the smallest distance claimed by any nation was " the utmost range of a cannon ball, usually stated at one sea league ". The character of its coast would entitle the United

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[7] L. Oppenheim, *International Law: A Treatise*, vol. I, *Peace*, 8th ed., H. Lauterpacht (ed.) (London, Longmans, 1955), p. 490, note 2.

[8] John Bassett Moore, *A Digest of International Law*, vol. I (Washington, U.S. Government Printing Office, 1906), p. 702.

States " to as broad a margin of protected navigation as any nation whatever ". President Jefferson, after reserving the ultimate extent for future deliberations, had set the distance " for the present " at " one sea league or three geographical miles from the sea shores ". The statement of Thomas Jefferson, in fact, demolished the case presented in the United States proposal, and was rather an argument in favour of the Soviet Union's proposal, since a twelve-mile maximum was modest in comparison with twenty miles.

31. Under General Assembly resolution 1105 (XI), the 1958 Conference was to examine the law of the sea " taking account not only of the legal, but also of the technical, biological, economic and political aspects of the problem ". Since the time when the concept of the territorial sea had been evolved — when the delimitation of the sea had been determined by the will of the principal maritime Powers — a large number of States had come into being. At The Hague Conference in 1930 forty-two States had been represented, whereas at the present Conference eighty-eight States were represented. To become part of the law of nations, a rule of law must be made by all the nations. Agreement among the maritime Powers alone was not law. That explained why the new nations were striving to set the limits of their territorial seas at twelve miles. Since they had achieved their freedom they had rejected the delimitation that had been made on their behalf when their land and sea had been subject to foreign domination.

32. The representative of the United Kingdom, supporting the United States proposal, had claimed that security based on the extension of the territorial sea was a misconception, that under modern conditions of warfare a wide belt of waters was not a suit of armour, and that a wider limit would be costly and difficult to control. Those assertions were neither valid nor relevant. Each sovereign independent State was the best judge of its own interests and should not be told how to achieve its security. Even taken simply as advice, the words of the United Kingdom representative were hardly consistent with deeds. The United Kingdom had always considered its defence to be not within its territory, whether on land or sea, but in Europe, Africa and Asia. Was it too much for the small States to seek their security within their coastal sea? A wider territorial sea meant a wider zone of security. It was a belt of peace in time of war, since belligerent States could not conduct military operations within the territorial seas of other States. A twelve-mile limit would therefore expand the area of peace and contract the high seas which were the battlefield in time of war.

33. In regard to shipping, the United Kingdom representative had said that even a six-mile limit would involve great sacrifice for the United Kingdom, and that a twelve-mile limit would cause heavy loss and damage. The use of such terms assumed that the United Kingdom and other States sharing its views were the owners of the high seas, for surely a thing could be sacrificed only if it were possessed. That was no longer true, however. The high seas belonged to all and it was for all to define them.

34. The same representative had also emphasized the importance of distant-water fishing to the United Kingdom, and had said that the loss of the fish it produced would be a cruel blow to the British economy. But, just as the United Kingdom had adapted itself in a remarkable manner to the changing situation as members of the British Empire became independent, so, as a fishing State, would it have to adjust itself to the emergence of the coastal States asserting exclusive fishing rights within their coastal waters. With goodwill there was, of course, room for free co-operation between the fishing States, which had the experience and the equipment, and the coastal States, which had the fish within their territorial sea. One thing must be certain, however: there should be no more fishing fleets within the waters of the coastal States without the explicit agreement of those States. In spite of the assertion of the United Kingdom representative to the contrary, that kind of distant-water fishing was, in the main, a relic of imperialism and colonialism and, as such, it should cease.

35. The coastal peoples, particularly those of under-developed countries, had no spirit of ill-feeling or selfishness. They needed the food that the fish of their coastal waters would give them, and they needed to catch and process their own fish, and build up their own fishing industry, so that they would not have to re-import fish at great expense. The United Kingdom representative had condemned the Canadian proposal for its injustice in depriving the fishing States of their " rights "; but was it an act of justice to meet the demands of fishermen and their families and to deny those of millions of people around the world for economic development, social betterment and food, food which lay only within a few miles of their coasts? In the final analysis, it was that human factor which should influence the Conference's course of action. A proposal fixing the breadth of the territorial sea at twelve miles would be consistent not only with state practice and security, with political and psychological considerations, but with the needs and interests of humanity. In supporting a twelve-mile limit, Saudi Arabia had no desire to inflict injury or hardship upon anyone. The interests of the Arab States, based on geography and history, were no less vital than those of any of the great Powers represented at the Conference. The shores of the Arab States extended from the Atlantic to the Persian Gulf, and included the Gulf of Aqaba, which was under the exclusive jurisdiction of Saudi Arabia, the United Arab Republic and Jordan. At the same time, despite the importance of their natoinal interests, they were not unmindful of the interests of the whole civilized community. It was their sincere conviction that their position was in keeping with the needs of the international community and with law.

36. Mr. GARCIA ROBLES (Mexico) referred to the question which the Ceylonese representative had asked the representatives of the United States and the United Kingdom at the 15th meeting, and to his own statement at the 10th meeting in which he had given the works in which the Spanish and English texts of the bilateral treaties with Mexico could be found. It was very useful that the French representative had cited the French text of one of those treaties: that concluded between Mexico and France in 1886. The provisions of that treaty, in whatever language, bore out what the Mexican representative had previously said — namely, that sovereignty was fully recognized over the territorial sea

to the distance of twenty kilometres reckoned from low-water mark, which the Contracting Parties had agreed to consider as the limit of the territorial jurisdiction of their respective coasts. The Parties had, however, voluntarily limited that sovereignty by a phrase reading:

> " Nevertheless, this rule shall only be applied for the carrying out of the custom-house inspection, the observance of the custom-house regulations, and the prevention of smuggling; but on no account shall it apply to the other questions of international maritime law." [9]

The treaty between Mexico and the Domunican Republic, signed on 29 March 1890, contained a similar clause.[10] It should be noted that of the thirteen treaties regarding the Mexican territorial sea which he had mentioned in his statement, five were still in effect, and four of them did not stipulate any such restriction on sovereignty. The most notable example was article 5 of the 1848 Treaty of Guadalupe Hidalgo in which it was stated that: " The boundary line between the two republics shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande." [11]

37. Mr. GROS (France) pointed out that as the treaty referred to by the Mexican representative had been concluded and signed in French, the French text was authentic. The Mexican representative was perfectly free to interpret it as he thought fit, but the French delegation maintained its interpretation, since the meaning of the text in French left no room for dispute.

The meeting rose at 6.30 p.m.

[9] *Laws and Regulations on the Régime of the Territorial Sea* (United Nations publication, Sales No.: 1957.V.2), p. 756.

[10] *Ibid.*, p. 759.

[11] *Ibid.*, p. 745.

TWENTY-FIRST MEETING

Friday, 8 April 1960, at 11.30 a.m.

Chairman: Mr. José A. CORREA (Ecuador)

Consideration of the questions of the breadth of the territorial sea and fishery limits in accordance with resolution 1307 (XIII) adopted by the General Assembly on 10 December 1958 *(continued)*

GENERAL DEBATE *(continued)*

Statements by Mr. Dean (United States of America), Mr. Drew (Canada), Mr. Caabasi (Libya) and Mr. Rafael (Israel)

1. Mr. DEAN (United States of America) said that, in response to what had proved to be the overwhelming desire of the States taking part in the Conference, the delegations of Canada and the United States of America had withdrawn their separate proposals (A/CONF.19/C.1/L.3 and L.4) and were now submitting a joint proposal (A/CONF.19/C.1/L.10) on behalf of the two Governments. The new proposal on the breadth of the territorial sea and fishery limits had been worked out in consultation with the delegations of both coastal and fishing States to meet the widely recognized need for a single proposal capable of securing the overwhelming support of the Conference.

2. The joint proposal provided for a maximum limit of six miles for the breadth of the territorial sea, and for an exclusive fishing zone contiguous to the territorial sea, extending twelve miles from the baseline. It would also permit foreign States whose nationals had made a practice of fishing in the outer six-mile zone during the five years preceding 1 January 1958 to continue to do so for a period of ten years from 31 October 1960.

3. The two Governments believed that the proposal would meet the wishes of coastal States, especially those of the newer countries, whose desire to obtain exclusive fishing jurisdiction over a zone extending for twelve miles from their coasts had long been viewed with sympathetic concern by the Canadian and United States Governments. The United States Government wished to thank the many delegations which had expressed support for its original proposal, and to state that the withdrawal of that proposal had been prompted by its earnest search for an acceptable balance between the interests of all nations with regard to the law of the sea, and thus to promote the success of the Conference. The work of the first United Nations Conference on the Law of the Sea and the discussions of the past three weeks had progressively narrowed the probable area of final agreement, and the proposals submitted to the present Conference had clearly indicated the kind of compromise needed to secure the necessary two-thirds majority. It seemed plain, for instance, that no proposal permitting a twelve-mile territorial sea would command such support, whereas the new joint proposal would, in his view, satisfy the immediate needs and future aspirations of coastal States, while at the same time protecting foreign fishing from unnecessary or precipitate injury, and would therefore have an appeal wide enough to ensure its adoption by the Conference. In submitting the proposal, he wished to pay a tribute to the unselfish efforts of the delegations which had helped to make the compromise possible, especially those of Canada, Pakistan, Australia, Norway and Brazil.

4. He emphasized that the United States Government was making two important concessions in agreeing to impose a time-limit on foreign fishing rights within the six-to-twelve-mile zone, and in agreeing to a period of ten years only for the continuance of such rights. For countries, like his own, which fundamentally preferred to keep a three-mile limit for the territorial sea without a contiguous fishing zone, the joint proposal went much more than half way towards meeting the countries that advocated a territorial sea twelve miles wide. With regard to fishing jurisdiction, the concession was almost complete, or would be so after a relatively short lapse of time.

5. He drew attention to the fact that, when the territorial sea was extended from three to six miles, the area of territorial waters increased in geometrical proportion, while the presence of islands, each surrounded by its own territorial sea, also added greatly to the over-all

area of off-shore jurisdiction. Even in the case of the United States of America, which had relatively few off-shore islands, an extension of the breadth of the territorial sea from three to six miles would increase its area from 17,300 to 37,500 square miles. Using a straight baseline, as agreed upon at the first Conference, the presence of deep indentations and associated off-shore islands would allow a further appreciable sea area to be incorporated as an integral part of a State. Thus, a six-mile territorial sea, measured from a straight baseline, might take away from the existing high seas a zone averaging four, five or six miles in breadth.

6. The simplicity of the new joint proposal should commend it to those delegations which had foreseen practical difficulty in giving effect to certain of the provisions of the original United States proposal. If various amendments suggested to the original United States proposal had not been incorporated in the joint proposal, it was not because they had not been found worthy but only because the new text seemed to contain all the necessary ingredients of a compromise formula according to the general view. His delegation believed, however, as it had stated earlier, that the case of special situations where there was overwhelming dependence on fisheries within the twelve-mile zone merited the sympathetic consideration of the Conference. The new text did not specifically mention bilateral or multilateral fishing agreements. It had been assumed that the final instrument would include an article similar to article 25 of the 1958 Convention on the Territorial Sea and the Contiguous Zone, to the general effect that conventions or other international agreements already in force would not be affected by it. As regards future instruments, the establishment of the basic rights of the coastal and fishing States in the fisheries zone, as provided for in the joint proposal, would not *ipso facto* settle all the fisheries problems in that zone, since they varied from place to place. The principles set forth in the joint proposal would need to be implemented by such bilateral or multilateral arrangements as would permit them to be applied in an orderly and practical manner. Since the compromise involved sacrifices on the part of both fishing and coastal States in the interests of agreement, his Government believed for that very reason that arrangements for implementation should be negotiated in a spirit of mutual accommodation and goodwill.

7. The date of 31 October 1960, from which foreign fishing rights in the outer six-mile zone were to run for ten years, had been chosen because the Conventions adopted by the first Conference had been signed on 31 October 1958.

8. He did not underestimate or undervalue the fact that the joint proposal involved a sacrifice of fundamental principle and of large economic and human proportions for those States, like his own, whose nationals had for generations fished areas of the high seas up to the three-mile limit; but without such sacrifice no international agreement could be reached at the present Conference. He would similarly remind those States which would prefer to see a shorter period laid down for the continuance of foreign fishing in the outer zone that, in the view of nearly all delegations, it would be unfair, for the sake of formulating a universal rule of law, to terminate abruptly existing fishing practices on the high seas on which countries, towns, villages, enterprises and human families were to some extent — in many cases a large extent — dependent. It was reasonable and just to allow a period for necessary adjustment. The ten-year period proposed, which was inadequate and deemed by some unnecessarily harsh, could not be subject to reduction. Both sponsors were in fact agreed that it should not be subject to alteration in either direction. He hoped that the States which stood to benefit greatly by the new rule would exercise restraint, in order to lighten the burden of fishing States upon whom it would fall heavily. He pointed out that in many cases exclusive coastal-state jurisdiction would be granted immediately, owing to the absence of any foreign fishing in the outer zone. He hoped that the coastal States for which the rule would involve some present sacrifice would come to realize that, without some concession on their part, no agreement would be possible at the present Conference.

9. The United States delegation sincerely believed that, with reasonable flexibility on the part of the countries concerned, and with a thoughtful regard for the success of the Conference and the rule of law, the joint proposal could bring the present efforts of all delegations to a fruitful conclusion.

10. Before concluding, he wished to inform the Committee that the four Conventions and Optional Protocol adopted at the first Conference had been favourably reported out to the United States Senate by the Senate Foreign Relations Committee.

11. Mr. DREW (Canada) said that his delegation had withdrawn its own proposal (A/CONF.19/C.1/L.4) in order to join the United States delegation in presenting a compromise text, in the hope that it would offer a basis for agreement. As he had stated at the 5th meeting, the original Canadian and United States proposals had sought to attain the same objective, the only important difference between them having been in their treatment of the problem raised by distant-water fishing already long established. His delegation had never suggested that an abrupt end should be put to such fishing, but had consistently maintained that, given the variable factors involved, the matter could best be dealt with under bilateral or multilateral agreements that took into account the different interests of the parties. On the other hand, the United States delegation had originally proposed that such rights be exercised in perpetuity where fishing had been carried on for at least five years prior to 1 January 1958.

12. During the discussion a number of representatives had expressed the hope that the two proposals would be reconciled so as to establish common ground for supporters of a six-mile territorial sea and an additional six-mile fishing zone. That purpose had now been achieved in the new joint proposal (A/CONF.19/C.1/L.10), which represented the kind of compromise that made international agreements possible.

13. The Conference had been convened to draw up legal rules governing two specific matters only, and the general desire to reach agreement on those two issues of the law of the sea still to be codified might well be frustrated if there were any attempt to broaden the scope of the discussion beyond the Conference's terms of reference. Nevertheless, his Government was anxious to recognize

the special problems of States particularly dependent on fishing for the livelihood of their peoples, to which workable and adequate safeguards to protect their fishing resources were important.

14. The first two paragraphs of the joint proposal were identical with the original Canadian proposal. The third paragraph provided that States which had been engaged in distant-water fishing in the waters of other States for the requisite period might continue to do so for another ten years. That provision, designed to meet the views expressed during the discussion about the need for a period of adjustment, did not change the fundamental thesis originally advanced by the Canadian delegation, and constituted a considerable concession by the two sponsoring delegations. He would like here to pay a tribute to the way in which the United States delegation had helped to find a solution.

15. As in the case of the United States delegation, his own would naturally have preferred its original proposal, and had agreed to propose a period of ten years in the belief that that would be the maximum acceptable to States supporting the original Canadian proposal and the minimum acceptable to those which would have favoured the original United States text. The discussions had clearly shown that the figure could not be regarded as a bargaining counter. It represented a compromise which he believed was reasonable in all the circumstances, and which he hoped would receive general support.

16. One very important consideration to be borne in mind was that there was virtually unanimous agreement that there should be a fishing zone of up to twelve miles from the baseline. The wide divergence of opinion that persisted related to the delimitation of the territorial sea. He earnestly appealed to countries which, for one reason or another, had adopted a territorial sea of more than six miles not to refuse categorically and in any circumstances to reduce that width. There was overwhelming evidence to support his contention at the 5th meeting that, in the majority of cases, States which had extended their territorial sea to twelve miles had done so for the sole purpose of asserting control over fishing at a time when the concept of a fishing zone had not been accepted, and when such an extension had provided the sole means of establishing such authority. Full control over fishing would now be acquired through the rights conferred in the fishing zone. Surely, therefore, there could be no question of conceding any established rights in accepting the narrowest territorial sea supported by the overwhelming majority of those countries which owned and operated the peace-time air and sea transport of the world.

17. Canada was one of the many countries engaged in peaceful navigation by sea and air which still adhered to a three-mile territorial sea. It would have greatly preferred to see that limit maintained, but in an effort to reach a compromise had indicated its willingness to extend it up to the maximum reasonable figure. With the adoption of a twelve-mile fishing zone, every State would possess the means of essential fisheries control without impairing the freedom of the high seas. Surely six miles was more than enough for the territorial sea. In no conceivable circumstances could his Government be regarded as an aggressor, and it was convinced that the territorial sea beyond six miles offered no advantage from the point of view of defence under modern conditions, but would conversely limit the freedom of navigation and impose unnecessary burdens on coastal States.

18. In conclusion, he expressed his gratitude for the extremely useful suggestions made by representatives from every part of the world both in the Committee and in private discussion. Those States seeking agreement in terms of a narrow territorial sea with a contiguous fishing zone offering every measure of control which did not interfere with the freedom of the high seas had already made a great concession in accepting an extension of the territorial sea from three to six miles. As the representative of one of the younger, and certainly one of the most peace-loving, nations, he urged others to meet it half way so as to demonstrate to the world that the eighty-eight countries represented at the Conference were not divided by arbitrary barriers or doctrinaire views, but were prepared to reach agreement in order to further the prosperity, peace and security of mankind.

19. Mr. CAABASI (Libya) said that the International Law Commission's statement that international law did not permit an extension of the territorial sea beyond twelve miles [1] deserved the closest attention. Two schools of thought had been ably defended in regard to the delimitation of the territorial sea and the fishing zone. The first was upheld mostly by the maritime Powers, which maintained the three-mile limit but were ready to compromise by extending the breadth of their territorial sea to six miles, and by accepting a twelve-mile fishing zone with or without exclusive fishing rights. The second had been championed by States advocating a breadth for the territorial sea of up to twelve miles, with exclusive fishing rights within the same area. Both groups were seeking to safeguard national security and the living resources of their coastal waters, and neither aimed to exceed a twelve-mile limit for either the territorial sea or the fishing zone, thereby tacitly endorsing the International Law Commission's conclusion. The only divergence of view lay in whether or not all nations should establish a single uniform limit for the territorial sea.

20. His delegation supported the principle contained in article 1 of the sixteen-Power proposal (A/CONF.19/C.1/L.6).

21. His delegation could not support article 3 in the original United States proposal, and commended article 7 of the sixteen-Power proposal which was not designed to protect so-called historic rights but allowed for the regulation of matters of common interest.

22. Off-shore fishing was being developed in Libya as one of the most productive sources of revenue and as an economic resource both for internal use and for export. Though the territorial sea had been established at twelve miles by act of Parliament, foreign fishing vessels were continually and illegally entering the territorial sea to fish and to put down sponge divers. Those were the tangible considerations which had led his Government to extend the territorial sea up to twelve miles, action which accorded with the International

[1] *Official Records of the General Assembly, Eleventh Session, Supplement No. 9*, p. 4.

Law Commission's opinion that "... in all cases where the delimitation of the territorial sea was justified by the real needs of the coastal State, the breadth of the territorial sea was in conformity with international law ".[2]

23. The two conferences on the law of the sea convened by the United Nations had opened a new epoch in the progressive development of international law. For the first time a great number of countries, old and new, great and small, were participating in the elaboration of a complete set of international rules. The diversity of national interests between the advanced and the less advanced countries should not be allowed to stand in the way of better mutual understanding and the adaptation of the rules of international law to modern conditions.

24. Mr. RAFAEL (Israel), exercising his right of reply to remarks made at the previous meeting, said that it was unnecessary to reiterate well-known geographical and historic facts. Israel was one of the four coastal States on the Gulf of Aqaba, and its position remained the same as that stated by its Foreign Minister in the United Nations General Assembly on 1 March 1957.[3]

The meeting rose at 12.30 p.m.

[2] *Ibid.*, p. 13.

[3] *Ibid.*, *Eleventh Session*, 666th plenary meeting.

TWENTY-SECOND MEETING

Friday, 8 April 1960, at 3.30 p.m.

Chairman: Mr. José A. CORREA (Ecuador)

Consideration of the questions of the breadth of the territorial sea and fishery limits in accordance with resolution 1307 (XIII) adopted by the General Assembly on 10 December 1958 *(continued)*

GENERAL DEBATE *(concluded)*

Statement by Mr. Glaser (Romania)

1. Mr. GLASER (Romania) recalled that his country advocated a breadth of twelve miles for the territorial sea; his delegation's decisions on the various proposals before the Committee would accordingly be determined on that factor.

2. It should be emphasized from the outset that the aim was not to make the twelve-mile breadth obligatory, but to sanction the right of every State to extend the breadth of its territorial sea up to a maximum of twelve miles. The dangers which some speakers had summoned up were imaginary, as was proved by the fact that the seventeen States that had already adopted the twelve-mile limit were highly satisfied with it.

3. It had also been argued that if every State was free to adopt any breadth it chose, provided only that it did not go beyond the twelve miles, the ensuing lack of uniformity would lead to chaos. But there had never been a uniform rule governing the breadth of territorial waters. The territorial sea was the offspring of the needs of international life — of the interests of coastal States. Those interests varied from State to State, and even from time to time, as geographical, geological, historical and other circumstances varied. In support of that contention, he quoted Mr. Scelle, according to whom attempts to establish a uniform and common breadth for the territorial sea had always proved fruitless,[1] and Mr. Gidel, who concluded that there were no rules of international law fixing the extent of the adjacent waters.[2] That was why the so-called three-mile rule could never in the past be a general rule or one that could be made binding on all States.

4. Even the States which advocated a breadth of three miles did not always adhere to that principle in practice. Italy and France provided cases in point. The Italian representative at the Codification Conference held at The Hague in 1930 had stated that the three-mile principle was not in keeping with the demands of modern life, and that it was far from universally applied.[3] The Italian law No. 612 of 15 June 1912 had empowered the Council of Ministers to prohibit, in certain circumstances involving international security, the passage or anchoring of merchant ships less than ten sea miles from the Italian coast. France had on several occasions established a six-mile zone prohibited to foreign warships (Decrees of 1912, 1927 and 1929). So long ago as 1817 a law had fixed the limit of supervision for control purposes by the French customs authorities at twenty kilometres from the coast. If the principle of the freedom of the high seas precluded a coastal State's exercise of its sovereign powers beyond a limit of three miles, how were those unilateral acts to be explained?

5. In the absence of a rule, it was clear that States had been, and still were, entitled to lay down a limit of more than three miles for the breadth of their territorial sea. Experience revealed that the maximum limit practised was twelve miles. Neither the International Law Commission nor the most eminent jurists had ever been able to affirm that there was a rule prohibiting an extension of the maximum limit to twelve miles. But that which was not forbidden was permitted. Moreover, practice was tending to develop in the same direction. The leader of the United States delegation had himself explained to the Foreign Relations Committee of the United States Senate on 20 January 1960 that if no agreement was reached at the Second United Nations Conference on the Law of the Sea, state practice would move towards the establishment of a breadth of twelve miles for the territorial sea. The very conditions of international life called for the adoption of the twelve-mile rule so imperatively that even those who advocated six miles had been obliged in certain cases to recognize twelve. For example, no one contested a coastal State's right to extend its control over a twelve-mile breadth of sea in matters of immigration, public health, taxation, customs and fisheries. On the other side, it was certain that the twelve-mile limit in no way impaired the freedom of the high seas, since all vessels other than war-

[1] Georges Scelle, *Plateau continental et droit international* (Paris, A. Pedone, 1955), p. 53.

[2] Gilbert Gidel, *Le droit international public de la mer*, vol. III, *La mer territoriale et la zone contiguë* (Paris, Librairie du Recueil Sirey, 1934), p. 152.

[3] League of Nations publication, 1930.V.16, p. 135 and 136.

ships enjoyed the right of innocent passage. To those who had invoked the difficulties that a coastal State's exercise of its civil and criminal jurisdiction over a sea area twelve miles wide would entail, he would reply that there was no reason why the difficulties should be greater for a breadth of twelve miles than they were for the prevailing breadths of three, six or nine miles of territorial waters.

6. There remained the question of the freedom of navigation of foreign warships. The refusal of the western maritime Powers to recognize the twelve-mile rule was, in fact, determined solely by that aspect of the question of the freedom of the sea. If the breadth of the territorial waters was extended to distances of up to twelve miles, the warships of certain maritime Powers would no longer be able to cruise off the shores of other States to assist and support their countries' foreign policy, as the United States representative had put it before the Senate Foreign Relations Committee. Mr. Glaser emphasized that such a policy of force was no longer admissible, and was contrary to Article 2, paragraph 4, of the Charter of the United Nations. Moreover, under General Assembly resolution 1378 (XIV), States Members had recognized the need for general and complete disarmament, which would mean the disappearance of warships. There was therefore no need to prevent the Conference from reaching agreement on the twelve-mile limit simply in order to safeguard the passage of warships.

7. Those who advocated the twelve-mile rule on grounds of national security had been told that it was meaningless in the nuclear age. He would point out that most States had no nuclear weapons, so that for them the territorial sea could be a true pledge of security. Furthermore, recent experience showed that there was reluctance to embark upon a nuclear war, " localized " wars being preferred. Lastly, it was undeniable that in time of war an enemy could force his way into the territory of a State whatever the breadth of its territorial waters. It was in time of peace that the breadth of the territorial sea was important, for the twelve-mile breadth unquestionably made for security, in that it enhanced the difficulties of parachute landings, espionage, sabotage, etc. In any event, each sovereign State was the sole judge of its own security requirements.

8. Turning to the alleged " historic rights ", he associated himself with what the representatives of Saudi Arabia, Tunisia and Peru had said. On the one hand there was the country that had hitherto exercised the right to fish near the coast of another country; on the other hand there was the coastal State whose people had not been able to exercise the right to fish near their own coasts — not through inherent inability, as some alleged and as was stated in an article on the law of the sea published in 1958,[4] but because they had been prevented from doing so by the poverty and ignorance in which the yoke of colonialism had kept them.

9. It had been said that an extension of the limit to twelve miles would not attract fish to the waters involved. To that he would reply that if there had been no fish in those waters there would have been no so-called " historic rights ", because there would have been no fishing there in earlier times. He would remind the Committee that reference was made in article 1 of the draft international convenants on human rights[5] to the question of the right of peoples to self-determination; that implied the right of a State to dispose for itself of its natural resources, including its fishery resources.

[4] Julien Le Clère, " Le droit de la mer, création exclusive de la race blanche ", *Journal de la marine marchande et de la navigation aérienne*, 40th year, No. 1996.

10. In the present context he wished to draw attention to a contradiction in the statements made by the Canadian representative, who at the Committee's 5th meeting had shown, without rebuttal, that the recognition of " historic rights ", far from reconciling conflicting interests, would be inequitable, and at the previous meeting had affirmed that to recognize the lawfulness of historic rights constituted a compromise.

11. The Romanian delegation was convinced that the problem could be solved only by adopting the twelve-mile rule. The six-mile formula was not a realistic one and had only been proposed with a view to securing a sufficient majority against those States which supported the twelve-mile rule with responsibility for the possible by its sponsors, as a genuine solution: it was simply a lesser evil and an attempt to burden those who advocated the twelve-mile rule with responsibility for the possible failure of the Conference. But the question of the breadth of the territorial sea could not be solved by procedural methods and by manipulated majorities. It could only be solved if all States reached an agreement, and to that end the situation should be considered from a realistic point of view. If that were done, it would be seen that it was in the interests of States to adopt a breadth of up to twelve miles for their territorial sea. In Mr. Glaser's view, the controversy was but part of the eternal and universal struggle between the old and the new; on the present occasion, as always, the victory of the new could be obstructed and delayed, but it could never be prevented.

12. The CHAIRMAN declared the general debate closed.

The meeting rose at 4.30 p.m.

[5] See *Official Records of the Economic and Social Council, Eighteenth Session, Supplement No. 7*, p. 65.

TWENTY-THIRD MEETING

Monday, 11 April 1960, at 10.50 a.m.

Chairman: Mr. José A. CORREA (Ecuador)

Consideration of the questions of the breadth of the territorial sea and fishery limits in accordance with resolution 1307 (XIII) adopted by the General Assembly on 10 December 1958 *(continued)*

CONSIDERATION OF PROPOSALS
(A/CONF.19/C.1/L.1, L.2/REV.1, L.5, L.7 TO L.11)

1. Mr. RUEGGER (Switzerland) said that he must explain briefly the principles upon which his delegation's vote would be based. In order to ensure respect for international law, all ambiguity and any elements that

might give rise to disputes similar to those which had unfortunately arisen in the past, should so far as possible be eliminated. The aims of the Swiss delegation were still virtually the same as those it had expounded at the first United Nations Conference on the Law of the Sea. It wished for the greatest possible freedom over the greatest possible areas of the sea, which was *res communis*. It earnestly desired an agreement with the widest possible support, which might give a new and necessary impetus to efforts for the progressive codification of international law. Obviously, sacrifices would be necessary. A genuine demonstration of the willingness to make them had been the withdrawal of earlier proposals by certain delegations and the submission of a new draft.

2. The proposals before the Committee dealt with the problems of the breadth of both the territorial sea and the contiguous zone. The latter primarily concerned the great maritime Powers which enjoyed its fishing, but all countries, even those without sea coasts, were concerned with the former problem, that of the breadth of the territorial waters and the régime of the air-space superjacent. There was a very real difference between the right of innocent passage, which might be suspended if the coastal State considered it necessary for reasons of security, and the absolute right of free navigation in the high seas. The extension of territorial waters beyond the classic three-mile limit, or the six-mile limit which the majority of States now seemed ready to accept, to twelve miles would fundamentally after the map of the high seas. To go into the delays and disputes of all kinds which might be entailed, to the detriment of the users of the seas, would be otiose. Switzerland was a considerable user of the seas, not so much in the number and tonnage of the ships flying its flag, as in the volume of its imports and exports carried by sea. As a user of the seas, it favoured the solution which seemed to it the most liberal, and the one which departed least from the traditional one. It would therefore vote for the proposal which did not provide for an extension of the territorial waters beyond six miles, that submitted jointly by the Canadian and United States delegations (A/CONF.19/C.1/L.10).

3. Any decision taken by the Conference on territorial waters would have an undoubted and lasting effect on the superjacent air-space. The question might be asked whether the Conference, which had been convened to codify existing international law or to propose new international law to the States, was entitled to commit States for the future in a field that concerned them all, whether coastal States or not, since increasingly they regarded air transport as destined to cover a large part of their trade. The right of free air navigation over the free high seas was one of the basic elements of the law of the sea, reaffirmed and codified with admirable clarity in the 1958 Convention on the High Seas. Air-space was also *res communis*. It had been argued that in practice there would be no impediment to air transport, owing to existing agreements, in particular the 1944 Chicago Convention on International Civil Aviation and the broad network of bilateral agreements dealing with civil aviation. Undoubtedly, such agreements were necessary and useful, but there was obviously a substantive difference between agreements limited in space, and sometimes in time, and accompanied by reservations and basic regulations and the situation likely to arise if the breadth of the territorial sea were extended. By extending territorial waters, the territory of the coastal state was extended in law, and there was not in international law *ipso facto* a right of flying over " territories ". He agreed entirely with the opinion expressed by the representative of Australia on that point at the 11th meeting.

4. Where the Icelandic proposal (A/CONF.19/C.1/L.7) was concerned, the Icelandic delegation would no doubt have been sensible of the great sympathy evoked by its explanation of the difficulties of safeguarding a national economy based almost entirely on fishing. The legal formulation of that proposal, however, raised considerable doubts. It might be possible to amend the proposal, unless the solution of Iceland's special problem was to be found in the Canadian and United States proposal. He would like to draw attention to a suggestion made in 1959 by Mr. Philip Jessup at the American Society of International Law that international assistance might be given to the Icelandic fishermen in their difficult struggle for a livelihood. Surely it would not be too bold to broaden that idea and to make provision, during or after the present Conference and through appropriate machinery, for joint action by the international community for all hard-pressed fishermen, regardless of their origin, to help them cope more effectively with contemporary conditions and any new situations which might arise from a change in international law.

5. In general and for reasons of principle, the Swiss delegation welcomed the system for peaceful settlement of disputes set out in paragraph 4 of the Canadian and United States proposal. For the kinds of dispute covered by that paragraph the procedure contemplated, which was that outlined by the International Law Commission in draft articles 51 to 59 on fishing and the conservation of the living resources of the high seas,[1] seemed appropriate. But for other kinds of dispute which might arise out of the application of the agreements which the Conference hoped to prepare there should, if possible, be compulsory reference to arbitration or to the international judicial settlement or, failing that, as a minimum, power to extend to the new agreements the rules of the 1958 Protocol. It would be most desirable that even States which were not yet prepared to accept compulsory arbitration or judicial settlement should all undertake regularly to refer disputes to conciliation commissions. Finally, precisely in the area of the law of the sea the Conference was attempting to codify, as wide use as possible should be made of commissions of inquiry. In regular resort to such commissions, which had been successfully developed in international practice over half a century, lay their best hope of seeing the rule of law established over the sea.

6. Mr. HARE (United Kingdom) regretted withdrawal of the original United States proposal (A/CONF.19/C.1/L.3) since it had been, in the opinion of his delegation, the fairest and most balanced proposal tabled at the Conference. The United Kingdom had been willing to accept the sacrifices which that proposal would have imposed upon it because it wanted the Conference to

[1] *Official Records of the General Assembly, Eleventh Session, Supplement No. 9*, p. 10.

succeed, and it knew that to be impossible unless all were prepared to make real concessions.

7. The proposal originally tabled by Canada (A/CONF./19C.1/L.4), which had also been withdrawn, had been unacceptable to the United Kingdom, as indeed to other States with established distant-water fisheries, because it would have placed in jeopardy overnight the livelihood of countless people. The new joint proposal by Canada and the United States (A/CONF.19/C.1/L.10) went some way towards removing that injustice. In putting forward their joint proposal, the delegations of Canada and the United States had given clear evidence of a true spirit of compromise.

8. He could not pretend to like the new proposal. Ten years was far too short a time for the distant-water fishermen to adapt themselves to the consequences of being shut out of fishing grounds within the twelve-mile zone where they had fished for generations. It was too short a time to amortize vessels and equipment, too short for fishermen to acquire the new skills, knowledge and capital equipment that would certainly be needed. If traditional rights had to disappear, a period of fifteen to twenty years would have been far more just.

9. If the joint proposal was carried, it would mean that the United Kingdom and many other countries would have to shoulder a much greater burden of sacrifice than under the original United States proposal. As an illustration of what that involved in the case of the United Kingdom, he would cite the latest relevant figures. The British trawler owners, as a gesture of goodwill and in the hope of contributing to a successful outcome of the Conference, had decided to withdraw their ships entirely from the waters round Iceland, which were of particular importance at that time of year. In the first week in which the full effect of the withdrawal was felt, total distant-water landings of fish, when compared with the average for the same period over the last four years, were down by 27 % at Hull, 61 % at Grimsby and 89 % at Fleetwood, the principal distant-water fishing ports. That must mean less food for the British people and hardship for the fishermen. The ten-year period in the joint proposal would help the fishing States to reduce hardship; it most certainly would not eliminate it. The United Kingdom delegation had reluctantly accepted the fact that the ten-year period proposed was the only one which could bring together those who wanted a longer period and those who wanted a shorter period or none at all. It would therefore vote for that proposal. It emphatically agreed with the sponsors of the proposal, however, that if the length of the period was subsequently to be whittled away, the whole basis of the compromise would be destroyed.

10. It should also be clearly understood that the jurisdictional rights of the coastal State in the outer six-mile zone must be exercised in such a way that the special fishery rights given by article 3 of the proposal were not frustrated or impaired. During the ten-year period, the distant-water fishing State must be allowed to continue fishing in the same way as in the past. At the 20th meeting the representative of Saudi Arabia had said that the United Kingdom, as a fishing State, would have to adjust itself to the assertion of the coastal States' exclusive fishing rights within their coastal waters. The new joint proposal provided for precisely that situation, since it gave the fishing States a ten-year period in which to adjust the pattern of their fishing, and he accordingly trusted that the representative of Saudi Arabia would support the proposal.

11. Several speakers had tried to connect traditional fishing practices with colonialism. That was a myth which must be laid to rest. Nearly all the dependent territories of the United Kingdom would be affected by the result of the Conference. Their interests differed widely, some being largely dependent on fishing off the coasts of neighbouring States, while others had neighbouring States fishing off their own coasts. The majority would gain immediate exclusive fishery jurisdiction whatever the decision of the Conference, because no other country had ever fished anywhere near their coasts. But in no case had any colonial Power made a practice of fishing in a six to twelve-mile zone off those territories. It was therefore not the so-called colonial Powers who would benefit from the temporary fishing rights that a few of those territories might have to concede.

12. The proposal tabled by the delegation of Iceland (A/CONF.19/C.1/L.7) was precisely the same as the one that had been put before the Conference in 1958,[2] and rejected.[3] It continued to give rise to a number of uncertainties. First, preferential rights would be given to " a people " overwhelmingly dependent upon the coastal fisheries for its livelihood or economic development. If the expression " a people " meant any coastal fishing community that looked to the sea for its livelihood, it would apply very widely, because there were communities of that kind everywhere. Secondly, who was to decide whether the catch in the adjacent high seas needed to be limited, and were scientific conservation needs to be the sole grounds for such a decision ? Thirdly, what were the criteria for deciding the preferential rights that were to be given ? Iceland's proposal did not answer any of those questions. It mentioned only the interests of the coastal States and was silent on the interests of others.

13. The situation was fundamentally different from when the proposal first came forward in 1958. Then it was being considered against the background of a six-mile exclusive fishery limit, whereas, under the present joint Canadian and United States proposal, after a very short time the coastal States would enjoy exclusive fishing within a twelve-mile zone. Moreover, under the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas, those States would be able to take care of conservation requirements beyond the twelve-mile zone. Surely coastal fishing communities in general could feel that their essential interests would be safeguarded ? If it could be assumed that Iceland's proposal was meant to relate only to the very few countries whose economies were overwhelmingly dependent on their fisheries, different questions arose. If there were enough fish for all within the contiguous zone during the proposed ten-year period, there would seem to be no case for preferences; but if there were not enough fish, consideration could be given to some limitation of distant-water fishing. The United Kingdom delegation

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[2] See *Official Records of the United Nations Conference on the Law of the Sea*, vol. V, 39th meeting, paras 36-56.

[3] *Ibid.*, vol. II, 15th plenary meeting, paras. 4-52.

would, therefore, be ready to consider the claims of such countries for preferential treatment within the twelve-mile zone during the ten-year period.

14. The United Kingdom was not unsympathetic towards the special situation of the few countries which were overwhelmingly dependent upon fisheries for their livelihood. In 1958, three countries had been generally recognized as being in that category — Iceland, the Faroes and Greenland. Greenland was sparsely peopled and her coastal waters were rich in fish. There would be more than enough fish for the local fishermen throughout a ten-year period and for many years to come. The Faroese fishermen had operated for years past all over the North Atlantic — off Iceland and Greenland and elsewhere. Iceland had a highly developed fishing industry with a large and modern fleet, including large trawlers equipped to operate far afield. Her fish catch had almost trebled over the past 20 years, and the catch per head of population had doubled in that time, so that there was obviously no critical fishery situation for Iceland.

15. Fishermen of other nations, as well as the United Kingdom, fished in the high seas adjoining Iceland, beyond the proposed fishing zone. But leaving the United Kingdom out of the argument, what of the Faroese fishermen, and the Belgian fishermen who fished there ? Belgium was a small country with a population about forty times that of Iceland but with only a very short coast line, off which it could not hope to find more than a small part of the fish it needed. Special situations could apply to fishery States as well as to coastal States. Preferential fishing in the high seas beyond the jurisdiction of the coastal State was, therefore, a subject which bristled with complications. The case for such preferences, even for those who were especially dependent upon the fisheries, was not so obvious as some seemed to think, and grave injustice could easily arise.

16. The joint proposal before the Conference was a confirmation of the willingness of many nations to make real concessions in order to reach a solution. It seemed, however, that the readiness to make concessions had so far been confined only to those nations who had joined in supporting a six-mile territorial sea with an adjacent six-mile fishing zone. There had been no move, no concession, no sacrifice so far on the part of those who had supported a twelve-mile régime. Such a one-way traffic of ideas could certainly cause the breakdown of the Conference and defeat the hopes of all who genuinely sought to strengthen international law. If the spirit of the United Nations was to prevail, those countries which had so far made no move towards a compromise should do so. All nations, large or small, ancient or new, had responsibilities as well as rights.

17. Mr. DE LA PRADELLE (Monaco) said it was difficult to disentangle the law of the sea from the accretions imposed by national sovereignty. He hoped that one day the compromise formulae produced by the " diplomacy of the sea " would give place to a true law of the sea, in harmony with the Charter and offering all the possibilities of peaceful solution which the Charter provided: arbitration, judicial settlement, and inquiry. The real solution of the problem of the territorial sea would be to delimit the territorial sea of the coastal State from the high seas, which were the public domain of mankind. Institutions which at present had only an advisory competence, such as general organizations like the Inter-governmental Maritime Consultative Organization, and the numerous scientific and fisheries commissions of a regional nature, like the International Commission for the Scientific Exploration of the Mediterranean, would be raised to the higher level of legislative, administrative and supervisory bodies. For the time being, the proposals before the Conference obviously represented only a first stage in such a development.

18. So far as concerned the width of the territorial sea, his delegation urged that the sacrifice offered unilaterally by the supporters of the traditional three-mile rule should not be frustrated by further political manoeuvres. The six-mile limit, or any other width proposed in order to reach a compromise, should be so defined as to exclude any interpretation which might allow a State to extend that limit. His delegation would not like the Conference to provide the occasion for a new wave of encroachments on the freedom of the seas by the coastal States. It drew attention to the happy precedent of the Washington Conference in December 1959, on the status of the Antarctic, which had decided to " freeze " for the duration of the treaty the claims advanced by twelve Powers to the territory of the fifth continent now devoted to scientific research.

19. Of all the formulae suggested for fixing the maximum width, he preferred the one to be found in the original United States proposal (A/CONF.19/C.1/L.3).

20. As regards the contiguous fishing zone, his delegation would be glad if the Conference agreed to recognize the perfect legitimacy, in equity, and the legality, in law, of a guarantee, for an unlimited period, of individual and community fishing rights acquired, in the outer six-mile zone, by the prolonged exercise of an essential freedom of the sea.

21. The feebleness of some of the arguments advanced against those rights, rights which had been improperly described as historic, was striking. The argument, allegedly based on equity, which drew a contrast between the poverty of the coastal populations and the profits of the foreign fishing concerns, was contradicted by the reports of the Fisheries Division of the Food and Agriculture Organization of the United Nations. While it was just that special situations like that of Iceland should be taken into account, the interests of the coastal States should be given only prior, not exclusive, consideration. The geographical argument, based on rights of proximity, was equally unsound. The most that geography gave was not rights but a favourable position for acquiring them. The " legal " argument which evoked the recently proclaimed right of the permanent sovereignty of peoples and of nations over their natural wealth and resources made light of the conditions to which the General Assembly had subjected recognition of that right. A perusal of resolution 1314 (XIII) would show that, for recognition of that sovereignty, the General Assembly required that it should be effective and that due regard should be paid to the rights and duties of States under international law, and to the importance of encouraging international co-operation in the economic development of under-developed countries.

22. A sample survey of international jurisprudence would provide cogent support for acquired rights in the high seas in the zone, from three to six miles from the coast, adjacent to the deep waters, a zone which provided a veritable fish preserve for non-coastal fishing interests. Cases in point were those of the German minorities in Poland and the Anglo-Norwegian fisheries. They showed that private rights acquired in accordance with existing law did not lapse in consequence of a change of sovereignty and could legitimately be taken into accounts. His delegation therefore considered that, in reserving fishing rights acquired in the high seas in accordance with international legislation on the freedom of the high seas, which remained unchanged, the compromise solution mentioned was in accordance not only with equity but with international law as well. The delegation of Monaco would support the proposal which offered the best guarantee for the future exercise of the traditional freedom of the seas, and which respected the rights of fishing communities acquired in accordance with international law.

23. Mr. TUNCEL (Turkey) observed that after three weeks of general discussion, the Committee at last had before it some realistic proposals; it would have been preferable had they been submitted earlier, for then it would have been unnecessary for delegations to express their views on texts which were only provisional.

24. The Turkish delegation welcomed the joint Canadian and United States proposal (A/CONF.19/C.1/L.10) which provided a useful basis for further discussion. The proposal was, of course, a compromise, and as such was bound to have certain defects and to entail some sacrifices, but it was acceptable to his delegation. There was, however, one comment which his delegation would like to make concerning the fishing zone. Paragraph 2 set forth a definite principle, according to which the coastal State would have in the fishing zone the same rights in respect of fishing and exploitation of the living resources of the sea as it had in its territorial sea; but paragraph 4 implied that the provisions of the Convention on Fishing and Conservation of the Living Resources of the High Seas would apply after the transition period had expired. In order to eliminate that anomaly, the word " paragraphs " at the end of paragraph 4 should be put in the singular, to make it clear that the provision applied only to the transition period.

25. Furthermore, since it seemed unlikely that certain States would change their stand even if the Conference adopted a decision contrary to their positions, the Turkish delegation would like to recommend consideration of the reciprocity clause contained in article 4 of the sixteen-Power proposal (A/CONF.19/C.1/L.6). Where the Turkish delegation was concerned, it was prepared to approve the principle of reciprocity as set out in the text of the article in question.

26. Until the joint Canadian and United States proposal had been introduced, his delegation had viewed the Icelandic proposal (A/CONF.19/C.1/L.7) with some sympathy. He now submitted, however, that the Canadian and United States proposal seemed to meet the condition in the third paragraph of the commentary on the Icelandic proposal expressed in the terms that " a zone of twelve miles from the baselines goes a long way in taking care of the Icelandic requirements ". He would like to have the views of the delegation of Iceland on that point.

The meeting rose at 12.35 p.m.

TWENTY-FOURTH MEETING

Monday, 11 April 1960, at 3 p.m.

Chairman: Mr. José A. CORREA (Ecuador)

Consideration of the questions of the breadth of the territorial sea and fishery limits in accordance with resolution 1307 (XIII) adopted by the General Assembly on 10 December 1958 *(continued)*

CONSIDERATION OF PROPOSALS (A/CONF.19/C.1/L.1, L.2/REV.1, L.7 TO L.11) *(continued)*

1. Mr. GARCIA ROBLES (Mexico), speaking on behalf of the sponsors, introduced the eighteen-Power revised proposal (A/CONF.19/C.1/L.2/Rev.1). It was not a new proposal, but a combination of the two earlier ones submitted respectively by Mexico (A/CONF.19/C.1/L.2) and by sixteen African and Asian countries (A/CONF.19/C.1/L.6), both of which had been consequentially withdrawn.

2. Article 1 of the revised proposal was identical with the corresponding provisions of both the original proposals. It proclaimed the right, existing in customary international law, of every State to fix the breadth of its territorial sea up to a limit of twelve nautical miles; that twelve-mile maximum breadth permissible under international law had been implicitly but unequivocably recognized by the International Law Commission.

3. The flexible formula provided in the revised eighteen-Power proposal was the only one which offered any prospect of a freely agreed settlement on the breadth of the territorial sea, because it alone of the proposals before the Committee corresponded to the prevailing situation in the national legislation of different coastal States. Moreover, it satisfied the legitimate rights, claims and aspirations of the coastal State without in any way impairing the freedom of maritime or air navigation.

4. The provisions of article 2, which dealt with fishery limits, had also been common to both the original proposals. The original Mexican proposal, however, had introduced an innovation by seeking to establish a fisheries zone whose extent would vary inversely with that of the territorial sea. That idea had been put forward in the hope that such a genuine system of compensation would induce many of those States which had not yet extended the breadth of their territorial sea, not so much to renounce their right to fix that breadth up to a maximum of twelve miles, but rather to abstain voluntarily from exercising it, at least for some time to come. Had it met with a favourable reception, the innovation might in many cases have led to the establishment of a territorial sea six miles broad or even less;

but it had been rejected, explicitly or implicitly, by the representatives of the maritime Powers, whose statements made it abundantly clear that they were seeking not merely a narrow territorial sea but a narrow fisheries zone as well. The Mexican delegation had therefore decided that there would be no point in continuing to press its suggestion, and had reverted to the formula first submitted to the 1958 Conference by Mexico and seven other countries of Latin-America, Africa and Asia,[1] which closely resembled that embodied in articles 2 and 3 of the original sixteen-Power proposal submitted at the present Conference (A/CONF.19/C.1/L.6).

5. Article 3 was substantially the same as article 4 of the sixteen-Power proposal and embodied the principle of reciprocity, which had been so aptly propounded by the Indonesian representative at the 14th meeting. Its purpose was to make sure that a State which fixed the breadth of its territorial sea or contiguous fishing zone at less than twelve miles did not find itself at a disadvantage vis-à-vis other States which adopted a twelve-mile limit.

6. The terms of article 4 were identical with those of the first part of article 3, paragraph 1, of the original Mexican proposal (A/CONF.19/C.1/L.2). As he had pointed out at the 10th meeting, the idea embodied in article 5 was not merely academic but had been put into practice by Mexico by the promulgation of the decree of 22 February 1960; as he had then observed, that course could certainly be followed by other countries, which would thereby be making a decisive contribution to the elimination of the deplorable fishing incidents which, particularly in recent years, had been all too frequent in the territorial seas of several countries, including Mexico.

7. Article 5 of the revised proposal was identical with article 7 of the original sixteen-Power proposal. It would make it possible for States which had made a practice of fishing in distant waters to conclude mutually satisfactory agreements with a coastal State without detracting from the latter's exclusive fishing rights under articles 2 and 3 of the new proposal. It was in that way and not by recognizing so-called " historic rights " that the interests of all concerned could be reconciled to the general benefit.

8. Article 6 of the revised proposal reproduced, with certain drafting changes, article 5 of the sixteen-Power proposal which had originated in a suggestion made by the Philippines delegation. The unshakable legal and historical grounds on which that provision rested had been described by the Philippines representative at the 5th meeting.

9. The Mexican delegation believed that, in addition to being constructive and moderate, the revised proposal which he had just introduced had the outstanding merit of facing up to the legal and political realities of the second half of the twentieth century; it further believed that its flexibility, its realistic approach and the spirit of equality and justice which inspired it would enable the proposal to make a genuine contribution to the progressive development of international law.

10. Turning to the joint proposal submitted by Canada and the United States of America (A/CONF.19/C.1/L.10), he said that it was totally unacceptable to the Mexican delegation in that it sought to establish a territorial sea six miles broad.

11. In that connexion, he recalled the many questions asked, and the many observations made about the thirteen treaties which had been concluded by Mexico with other countries between 1848 and 1908 and which contained provisions relating to the breadth of the territorial sea.

12. He did not wish to repeat the many arguments he had advanced at the Committee's 10th meeting against a six-mile territorial sea. He wished to add, however, a further and particularly important one: the legal status of the territorial sea was identical with that of the land domain, for the State was sovereign over it. It flowed naturally from that doctrine that the coastal State alone was entitled to exercise all existing and future rights over that sea, subject to no limitation whatsoever other than the obligation to allow innocent passage to foreign merchant ships in the manner prescribed by international law. He could therefore not agree with the statement that the provisions of the 1958 Convention on the Territorial Sea and the Contiguous Zone, combined with the prerogatives of the exclusive fishing zone, would give the coastal State the same rights as those held in the territorial sea. In fact, the provision in question covered only customs, fiscal matters, immigration and public health; if fisheries were added, there would still be no provision for the security of the coastal State or for economic interests other than fisheries which might subsequently come to light.

13. For instance, it would have seemed incredible fifty years ago that it would become possible to exploit the petroleum resources of the continental shelf at considerable dephts below the surface of the sea. In similar fashion, technological progress might make it possible to develop hitherto unsuspected resources in the sea belt lying between six and twelve miles from the coast. If delegations to the Conference accepted the principle of a territorial sea six miles broad, their countries would have no future title to protect their interests in such resources, since they would have renounced their sovereign rights over that belt of the territorial sea. Only by clinging to their sovereignty over it could they later claim any rights in that regard; the retention of separate powers in respect of customs, fiscal matters, immigration, public health or fisheries would not be enough.

14. Referring to paragraph 3 of the Canadian and United States proposal, dealing with the case of States whose vessels had made a practice of fishing in the outer six miles of the fishing zone, he pointed out that, although the sponsors no longer sought to establish a right in perpetuity, since the provision in question laid down a time-limit of ten years from 31 October 1960, the limitations on species of fish caught and size of catch which had appeared in article 3 of the original United States proposal (A/CONF.19/C.1/L.3) had been abandoned. He recalled in that regard that at the first Conference the Canadian representative, speaking on the United States proposal [2] — a proposal which was similar in that respect

[1] *Official Records of the United Nations Conference on the Law of the Sea*, vol. II, annexes, document A/CONF.13/L.34.

[2] *Ibid.*, document A/CONF.13/L.29.

to the joint proposal (A/CONF.19/C.1/L.10) now before the Committee — had described the effect of the absence of any limitation on the size of catch in the following terms:

" The effect of the United States proposal would be very different. It made no attempt to protect established fishing rights in the measure to which they were at present exercised. If that proposal were adopted, the fact that a few small vessels had fished in certain waters for a period of five years would allow the fishing of a coastal State's waters to be extended to any number of craft wherever the original right could be established. The new nations would be helpless to protect their own waters, and would never acquire any fishing rights elsewhere." [3]

15. Lastly, it was rather odd that the joint proposal by Canada and the United States of America should have been presented as a conciliatory and compromise proposal. It was obvious that nothing that could be even remotely described as negotiations had yet taken place. There had been conversations between the advocates of two variants of the same school of thought, but another very important point of view had been completely ignored, as though it did not exist. The Mexican delegation believed that that procedure was mistaken: a struthious attitude was no substitute for a constructive policy. If the work of the Conference was to be fruitful, and its results acceptable to all, it was essential that the legal and material realities be taken into consideration. He feared that, if any other approach were adopted, it would be only too possible when the Conference closed to describe its labours as " ploughing the sea ".

16. Mr. SUCHARITAKUL (Thailand) said that his delegation had refrained from taking part in the general discussion, not for lack of interest in the questions under discussion, but because it had wished to hear the views of other Governments.

17. His Government had sent a delegation to the first United Nations Conference on the Law of the Sea in 1958 in a spirit of conciliation and co-operation, believing that only a compromise reached in such a spirit could reconcile the conflicting interests of coastal and non-coastal States. It had also maintained that, if fishery limits were made separate from and broader than those of the territorial sea, some States might find it unnecessary to extend their territorial sea beyond six miles. Out of consideration for the interests both of those States which adhered to the three-mile rule and of those which advocated a broader territorial sea, his Government had expressed its preference for a six-mile territorial sea and a twelve-mile fishing zone, measured from the same baseline. He recalled, too, that the delegation of Thailand had urged the General Assembly of the United Nations, at its thirteenth session, to convene a second conference on the law of the sea as soon as possible, emphasizing the need for a uniform and generally accepted rule governing the breadth of the territorial sea and fishery limits.

18. After careful reconsideration of those two questions in the light of the discussions at the first Conference, and in that of subsequent consultations with several other countries, the opinion of his Government remained the same as before. His Government believed that, with the resources at present available to it, it would be unable to exercise effective control over a territorial sea more than six miles broad. Moreover, if all territorial seas were extended to twelve miles and coastal States chose to exercise full control over vessels passing through their territorial waters, shipping costs could not fail to rise.

19. His delegation therefore considered that the Canadian and United States joint proposal (A/CONF.19/C.1/L.10) provided a reasonable compromise between the traditional three-mile limit and the twelve-mile territorial sea proposed by some delegations. The ten-year period during which fishing States would be allowed to continue to fish in the outer zone also seemed to make a fair allowance for the adjustments that would have to be made in the fishing industries of the countries concerned. His delegation would therefore support that proposal. It reserved the right to speak again on the new proposals more recently submitted to the Conference.

20. Mr. O'KEEFFE (Ireland) said that his delegation, being anxious for the Conference to achieve success, was prepared to make concessions to that end. Though Ireland was not a " new " country in the sense in which that term had been generally used during the discussion, it had gained its freedom less than fifty years ago, and had known " colonialism ". It did not favour a broad territorial sea, finding a belt of three miles measured from the applicable baseline adequate for its purposes. Mindful of the duties, as well as the rights, which the possession of property entailed, his government was unwilling to assume the additional responsibilities that would ensue from a wider territorial sea. That attitude was not altogether disinterested: failure to discharge such additional duties might involve the country in peril greater than that likely to arise with a narrower territorial sea.

21. His Government welcomed the new concept of an exclusive fishing zone and had had no difficulty in supporting the original Canadian proposal [4] in 1958. Irish fishermen did not fish near the coasts of other States, but foreign fishermen did fish off Ireland's coasts. But his Government appreciated the position of its European neighbours, which would be most affected by an extension of Ireland's fishing zone to twelve miles, and had consequently also found it possible in 1958 to support the United States proposal,[5] which had mustered the greatest number of votes. With those considerations in mind, he welcomed the present compromise proposal put forward by Canada and the United States of America (A/CONF.19/C.1/L.10), and paid a tribute to its authors for their efforts to devise a suitable formula that would satisfy the fundamental desire of younger States, including his own, for wider jurisdiction for fishing purposes.

22. It might not be fully realized that the proposal offered immediately exclusive fishing rights up to six miles and, if desired, a six-mile territorial sea. Where straight baselines were applicable, jurisdiction would be more extensive. The immediate exercise of exclusive fishing rights in a zone up to twelve miles broad would

[3] *Ibid.*, vol. II, 14th plenary meeting, para. 29.

[4] *Ibid.*, vol. III, annexes, document A/CONF.13/C.1/L.77/Rev.1.

[5] *Ibid.*, vol. II, annexes, document A/CONF.13/L.29.

be subject to but a single limitation, and that for a period of ten years only. He doubted whether coastal States would be able within a shorter period to develop their national fishing potential to a stage where they could exploit the outer six miles adequately, and hoped that they would examine the compromise most carefully to see whether it did not in fact entirely meet their needs.

23. He recognized that the establishment of an exclusive fishing zone would have serious repercussions on the economy of the fishing States, and that a decade might seem scant for the necessary economic and social adjustments. But he urged such countries to make their contribution to the success of the Conference by accepting the compromise so laboriously worked out. After all, there would still be the possibility of negotiating bilateral agreements under which the zones in question could continue to be exploited beyond the ten-year period, as the Canadian representative had pointed out when introducing his original proposal at the Committee's 5th meeting. The Irish Government was against permitting an extension of the territorial sea up to twelve miles. Ireland's merchant navy and international airlines were expanding, and his Government agreed with certain others that such an extension might make it necessary to lengthen sea and air routes and create other unpredictable difficulties.

24. Ireland was ready to consider sympathetically any reasonable concession to countries like Iceland, the population of which was overwhelmingly dependent for its livelihood on fishing, but he doubted whether the Icelandic proposal (A/CONF.19/C.1/L.7) would command support as it stood.

25. Mr. DREW (Canada) wished to correct an impression created by the Mexican representative which was capable of causing an unfortunate misunderstanding. Mr. Drew's statement at the first Conference, referred to by the Mexican representative, bore no relation whatever either to the position of the United States delegation as set forth at the present Conference or to the joint proposal (A/CONF.19/C.1/L.10) before the Committee. The entirely different proposal Mr. Drew had referred to at the first Conference had been replaced by the new joint proposal which was couched in clear and explicit terms, particularly with regard to the rights of fishing States in foreign coastal waters. He also repudiated the suggestion that the joint proposal had been submitted without due negotiation. Negotiations with other countries, including Mexico, had been going on over the past two years, and many useful suggestions had been received from various parts of the world. Although Canada's position differed greatly from that of the United States of America on many fundamental issues, the two countries were accustomed to discuss their differences in a friendly manner, and the present joint proposal was the outcome of such friendly negotiation. It represented a broad compromise between different positions, and had been submitted in the sincere hope that it would command the requisite two-thirds majority.

26. It was his belief that the original Mexican proposal (A/CONF.19/C.1/L.2) had been submitted, not with the intention of attracting serious consideration, but to provide a breathing space until it became possible to agree upon a formula such as that presented in the eighteen-Power proposal (A/CONF.19/C.1/L.2/Rev.1).

27. The Canadian delegation had waited in vain for some sign that countries like Mexico, with a territorial sea more than six miles broad, were prepared to match the concession already made by the countries which would prefer to keep to the three-mile territorial sea. Although numbered among the latter, Canada was ready to accept a six-mile limit, though it would thereby incur an obligation to patrol and supervise more than 125,000 additional square miles of sea. But it had no desire to extend that area any further, since it fully intended to discharge in full its various obligations with regard to its territorial sea. He had so far heard no convincing argument in support of the repreated claim that a wider territorial sea was necessary for defence purposes, and in his opinion a twelve-mile fishing zone, taken in conjunction with the provisions of the four Conventions adopted by the first Conference, afforded a country every right it could conceivably desire, while at the same time retaining the freedom of the seas and imposing no unnecessary burden on coastal States.

28. He would remind delegations that, in accepting the invitation to attend the present Conference, they had assumed an obligation to try to reach common ground, and not to stand firm by positions repeatedly stated over the years. Concessions on both sides alone could enable the Conference to prove that, despite political and other differences, it was yet possible to reach agreements on matters so intrinsically peaceful and essential to human welfare as the freedom of the seas and the right to fish.

29. Mr. GARCIA ROBLES (Mexico) wished to repeat briefly three points to which the Canadian representative had omitted to refer in his statements.

30. First, in comparing the joint proposal by Canada and the United States of America (A/CONF.19/C.1/L.10) to the original United States proposal (A/CONF.19/C.1/L.3), Mr. García Robles had pointed out that the former proposal, although it provided for a time-limit of ten years from 31 October 1960, no longer imposed any of the limitations on the species of fish caught or the size of catch which had originally featured in article 3 of the latter.

31. Second, on the question of negotiations, he had said that there had been conversations between the representatives of two variants of the same school of thought, but that another, very important point of view had been completely ignored, as though it did not exist. He was quite sure that all representatives well appreciated the true position in that respect.

32. Last, he wished to make it clear that, in the opinion of the Mexican delegation, the sum total of rights accruing from the exclusive fishing zone and the contiguous zone was not equivalent to the rights held by the coastal State in the territorial sea. The coastal State was sovereign in that area; the separate prerogatives relating to fisheries, customs, fiscal matters, immigration and public health were a completely different matter from sovereign rights, which covered the whole broad range of prerogatives subsumed under that concept. There was some analogy there with the difference between a limited right of usufruct and full property rights.

33. Mr. DEAN (United States of America) said that his delegation was always prepared to discuss any point with other delegations, and was anxious to lose no opportunity of doing so.

34. Replying to certain of the remarks made by the Mexican representative, he reminded the Committee that the United States proposal of 1958 had imposed no limitations as to the average level of catch of specific species. The limitations embodied in the United States proposal originally submitted to the present Conference (A/CONF. 19/C.1/L.3) had been introduced in response to suggestions made by various countries in the course of discussions held between the two conferences, but they had subsequently been criticized, notably by the representatives of India and Iceland, as too unwieldy. The representative of Ceylon, on the other hand, had found them unacceptable for countries in process of developing their distant-water fishing fleets. Similarly, conflicting views had been expressed about the time-limit which had been proposed for the exercise of certain established fishing rights with the object of meeting the desire of coastal States to reach a position that would enable them eventually to negotiate on an equal footing with fishing countries. Those were examples of the kind of problem encountered when trying to reconcile differing points of view.

The meeting rose at 4.55 p.m.

TWENTY-FIFTH MEETING

Tuesday, 12 April 1960 at 10.50 a.m.

Chairman: Mr. José A. CORREA (Ecuador)

Consideration of the questions of the breadth of the territorial sea and fishery limits in accordance with resolution 1307 (XIII) adopted by the General Assembly on 10 December 1958 *(continued)*

CONSIDERATION OF PROPOSALS (A/CONF.19/C.1/L.1, L.2/REV.1, L.5, L.7 TO L.11) *(continued)*

1. Mr. BARTOS (Yugoslavia) said he would first comment on the eighteen-Power proposal (A/CONF. 19/C.1/L.2/Rev.1). Articles 1 and 2 corresponded to the USSR proposal (A/CONF.19/C.1/L.1), and so faithfully reflected international juridical practice. According to the authors of the proposal, article 3 was designed to allay the fears of those delegations that considered that the ships of States which decided to retain a narrower territorial sea would be at a disadvantage in relation to the ships of States with a broader territorial sea. The effective reciprocity for which the text provided, and which was an increasingly frequent feature of contemporary treaties, ensured the absolute equality of sovereign States. That provision would certainly be helpful, for its effect could only be to restrain States which might be tempted to broaden their territorial sea for mere reasons of prestige rather than for the purpose of securing their frontiers or their economic independence. Article 4 was equitable, but at the stage the Conference had reached might give rise to a mistaken interpretation of the obligation under which foreign fishing interests were placed to observe the regulations of the coastal State. Only the coastal State was called upon to take action in its fishing zone in respect both of its own fishermen and of foreign fishermen. That was why the Yugoslav delegation had spoken against article 4 of the original United States proposal (A/CONF. 19/C.1/L.3). To avoid any unilateral interpretation of that provision, the authors should add a clause providing that the article in no way affected the right of the coastal State to apply sanctions in the event of a breach of its terms. As regards article 6, the best way of dealing with the question would be to keep to the resolution adopted in 1958 on the régime of historic waters,[1] especially since at its last session the General Assembly in resolution 1453 (XIV) had decided to consider the question.

2. Turning to the joint United States and Canadian proposal (A/CONF.19/C.1/L.10), he pointed out that even if one of the proposals before the Conference were adopted by a two-thirds majority, and even if the corresponding convention were ratified by two-thirds of the States participating in the Conference, the breadth of the territorial sea would still not be fixed universally by international law. There was no provision of international law whereby a rule established by agreement was binding on non-contracting States, so long as the juridical principle it expressed was not accepted, by reason of its universal application, as established juridical custom. In the present case, it appeared that, in the absence of such a contractual rule, the existing international practice would be maintained. On the subject of so-called historic rights, the Yugoslav delegation maintained its position. He noted with satisfaction that, so far as concerned the rights of foreign fishing interests in the fishing zone, the joint proposal took into account a number of objections which had been raised to the original United States proposal, but there were some other points he would like to mention.

3. First, an international easement was not acquired in five years. Comparative law taught that most legislations required twenty to thirty years for the acquisition of simple rural easements. For that reason the Argentine amendment (A/CONF.19/C.1/L.11) seemed more acceptable.

4. Secondly, he noted with satisfaction that the joint proposal did not mention the procedure provided for in the original United States proposal for the control of catches by the coastal State. That procedure would have been difficult and costly and liable at any moment to give rise to disputes. However, so long as paragraph 3 did not lay down the technical conditions in which foreign fishermen could engage in fishing, it was to be feared that, they might attempt, by intensive fishing to take unfair advantage of the limited period allowed.

5. As regards paragraph 4, he supported the Turkish representative's objection at the 23rd meeting that the provisions of the 1958 Convention on Fishing and Conservation of the Living Resources of the High

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[1] *Official Records of the United Nations Conference on the Law of the Sea*, vol. II, annexes, document A/CONF.13/L.56, resolution VII.

Seas could apply only to the disputes mentioned in paragraph 2, and not to those mentioned in paragraphs 1 and 2, as appeared from the provisions of the Convention relating to the composition and competence of the arbitration commission and the qualifications required of its members.

6. In reply to the argument based on the number of years required for the amortization of invested capital, the joint United States and Canadian proposal had the defect that it contained no provision covering the number and type of fishing vessels to be operated in the period during which fishing remained free. The absence of any such safeguard might encourage foreign fishing interests to make further investments and then, when their fishing rights were about to expire, to appeal on humanitarian grounds for further time to complete their amortization.

7. His delegation regretted that the Great Powers had not been successful in finding a universally acceptable text. Under the circumstances it would vote for the USSR proposal and, with the reservations mentioned above, for the eighteen-Power proposal, which it considered more complete.

8. Mr. VLACHOS (Greece) said he would first analyse the eighteen-Power proposal (A/CONF.19/C.1/L.2/Rev.1). Articles 1 and 2 differed from the USSR proposal (A/CONF.19/C.1/L.1) only in form. Article 3 introduced a new element, since it appeared to ensure reciprocity, but actually what it countenanced was the universally reprobated practice of retortion. The apparent reciprocity it introduced granted rights without imposing any obligation and would operate only to increase and not to reduce the claims of coastal States, since a State which had set its limit at less than twelve miles would be entitled, in its relations with another State, to increase the breadth of its territorial sea if that other State adopted a breadth greater than its own. To ensure real reciprocity, article 3 should read

> " A State, if it has fixed the breadth of its territorial sea or contiguous fishing zone at twelve nautical miles, will have the obligation vis-à-vis any other State with a narrower delimitation thereof not to exercise the same sovereignty or the rights stated in article 2 above beyond the limits fixed by that other State."

Even in that form, the Greek delegation would have been unable to accept the article in question, for the confusion resulting from it would prevent for ever the establishment of an intelligible map of the territorial seas. Furthermore, article 3 as thus drafted constituted an indirect admission that the twelve-mile limit was excessive, since a country which extended its territorial zone to twelve miles would lay itself open to reprisals.

9. Turning to the joint Canadian and United States proposal (A/CONF.19/C.1/L.10), he regretted that the original United States proposal had been withdrawn, for it was more in accordance with the permanent interests of the international community. The joint proposal was, however, the least remote from the position which Greece had adopted, for it preserved the freedom of the seas to the greatest extent possible and allowed fishing interests a time-limit, admittedly fairly short, in which to readapt themselves.

10. To those who maintained that the joint proposal was not compromise, he would reply that it was a compromise, not on detail, but on a principle: the exclusiveness of fishing rights in a contiguous zone. The United States had yielded on that point, and Canada had yielded on the quantitative limitation of fishing for a transitional period.

11. Consequently, the Greek delegation would vote for the joint proposal, since the withdrawal of the United States proposal left it no alternative; it did so, however, with great regret. During the last ten years, Greece had considerably increased its fishing potential and, whereas in 1950 ocean fishing had been unknown to Greek fishermen, large numbers of Greek trawlers now fished in the Atlantic. Within the next ten years, however, that system would have to be completely remodelled and adapted to new conditions.

12. Mr. DE PABLO PARDO (Argentina) introduced the Argentine amendments (A/CONF.19/C.1/L.11) to the joint Canadian and United States proposal (A/CONF.19/C.1/L.10). The amendments were as follows:

> " 1. To replace, in paragraph 3, the phrase 'for the period of five years' by the phrase 'for an uninterrupted period of thirty years'.
>
> " 2. To insert the following new paragraph after paragraph 3, the old paragraph 4 becoming paragraph 5:
>
> " 'In any area of the high seas adjacent to its exclusive fishing zone the coastal State shall have a preferential fishing right, especially if its economic development or the feeding of its population depends on that activity.' "

13. The Conference should recognize the right to fish off the coasts of other countries, provided such fishing had been exercised uninterruptedly for a long period and provided a time-limit were set for its termination. The time-limit of ten years in the joint proposal was acceptable, although it might have been made somewhat longer to allow for cases where there might be difficulties in altering fishing gear. A base period so short as five years was, however, unacceptable, especially as, under the present wording, it might not even have been uninterrupted. Even the period of thirty years proposed in the Argentine amendment was somewhat short to establish a legal case that fishing had continued, but it might suffice as a compromise. It should be remembered that in legal tradition war was a classic case of *force majeure* and that should be taken into account when computing the uninterrupted period.

14. The Argentine delegation believed that explicit recognition should be given to the right, often exercised in practice, to a preferential share in fishing carried on in the areas of the high seas adjacent to zones regarded as exclusive fishing zones. In view of existing laws and regulations, for some States to accept such a preferential fishing right would be a considerable concession. The recognition of the special interest of coastal States in the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas and of the preferential needs of countries whose people were overwhelmingly dependent upon coastal fisheries for their livelihood or economic development, which in some cases amounted

to real vital necessities, and the legal provision made by several States for the regulation of fishing, militated in favour of the Argentine contention.

15. The wording of the new article 4 proposed by the Argentine delegation had been decided after appropriate consultations and was preferable to a more detailed clause. The amendment was moderate, from the point of view of the coastal fishing States, and it was hoped would attract support not only from coastal fishing States but also from countries engaged in fishing off distant coasts, if they really were actuated by a spirit of compromise. The opening words " In any area of the high seas adjacent to its exclusive fishing zone " had been taken from the Convention on Fishing and Conservation of the Living Resources of the High Seas, except that the term " exclusive fishing zone " had been substituted for the term " territorial sea ", because an exclusive fishing zone beyond the territorial sea had been provided for in paragraph 2 of the Canadian and United States proposal.

16. The " preferential fishing right " would not mean that a State would prevent other States from fishing, but that it would enjoy a preferential share in the fishing and the exploitation of the stocks of fish beyond the twelve-mile limit, especially where its economic development or the feeding of its population depended on such fishing. Coastal States were fully entitled to exploit to the greatest possible extent the stocks of fish in the areas of the high seas off their coasts. There was nothing to prevent other States, in principle, from fishing such waters as well, but the Conference should recognize at least a preferential right for coastal States in waters in which they had an actual or potential interest.

17. Obviously such a right could be invoked only in the future and could not be disregarded by the arbitral commission referred to in the last paragraph of the joint proposal. Time would show how the right was to be exercised and how it could be put into practice if its scope were disputed by other States.

18. The term " preferential " referred basically to the exploitation of stocks of fish. The volume of fishing at present depended on the capacity and efficiency of the gear used and would become subject to the conservation regulations of the 1958 Convention as soon as it came into force. Nevertheless, the right of coastal States to at least a given minimum share of the fishing should be recognized, with special regard to their needs for economic development or food. It should be quite clear that that meant the exercise of a power, which would, of course, depend on the material ability to exercise it, but not an exclusive prerogative of the coastal State over part of the fishing. The principle of the preferential right of coastal States to fish off their own coasts should not only be the basis of the regulations enacted by such States themselves, but also of any agreements concluded between them and other States, and of any decisions by the special arbitration commission.

19. The Argentine amendment had been drafted in general terms, like any statement of principles. It might be objected that the terms " economic development " and " the feeding of its population " were somewhat vague and might cause difficulties in interpretation; they were, however, accepted concepts, and referred to the criteria to be followed and the special situations to be taken into account. His delegation would welcome any constructive criticisms and any suggestions that would improve the wording.

20. Mr. QUARSHIE (Ghana) pointed out that no new proposals had been put forward for three weeks. The Canadian and United States compromise (A/CONF.19/C.1/L.10) had come both too soon and too late: too soon because the debate had been frozen in its initial stages, and too late because its earlier submission might have given the Conference a useful basis for discussion. Nevertheless, it was the first move in the right direction and it was to be hoped that the example it set would be followed by other delegations.

21. Those who advocated the six-mile limit for the territorial sea, with a six-mile fishing zone, argued that a six-mile territorial sea was adequate for all purposes and that an extension was unnecessary and unduly expensive; those who favoured the twelve-mile territorial sea were convinced that that limit was essential for their security and economic life. The divergence between the two views did not seem too great, since the common denominator of both was a greater or lesser measure of sovereignty over twelve miles of coastal sea. The Canadian representative had said that he had not heard a single convincing argument in favour of the twelve-mile limit; but he himself could say the same of arguments in favour of the six-mile limit. If it were deemed too expensive to carry out the duties imposed by a twelve-mile limit in a country with 2,000 miles of coast, that should not prevent countries with, say, 350 miles of coast from establishing such a limit. In fact, that argument was an indirect suggestion that a coastal State should subsidize the trade of a foreign State by making it possible for the foreign State to carry on its trade more cheaply. It was also argued that a twelve-mile limit would not ensure the security of the coastal State because of the greatly increased range of modern weapons; but newly independent States still felt safer with a broader territorial sea than with a narrower one. The high seas could certainly provide enough fish without making it necessary for foreign States to exploit the coasts of others; surely there was no need to reduce the breadth of territorial seas in order to save money for wealthy maritime States with well-equipped fishing fleets.

22. Ghana feared exploitation of its fishing resources and threats to its security; it sought a solution which would guarantee it a maximum freedom from exploitation and threats. Its fears could not be allayed by exhibitions of technical knowledge or outright dismissal of its views. In consultations, the main point often lay less in the validity of the argument itself than in the reaction produced by the argument and the power to convince others. All delegations should try to understand each other and help each other to overcome their fears. If those fears related to exploitation, some provision might be made for technical and other assistance; when countries expressed fear for their security, the good intentions of others might be proved by arrangements to allay those fears, through bilateral and multilateral agreements. He was sure that if enough importance were attached to consultation, a compromise solution might be reached even before the first round of voting in the Committee of the Whole.

23. Mr. SUBARDJO (Indonesia) recalled that his delegation had advocated a flexible formula entitling a State to fix the breadth of its territorial sea up to a maximum of twelve miles; that formula had been embodied in article 1 of the eighteen-Power proposal (A/CONF.19/C.1/L.2/Rev.1) of which Indonesia was one of the co-sponsors. Article 2 of that proposal provided that if a State fixed the breadth of its territorial sea at less than twelve miles it had the right to establish a fishing zone contiguous to its territorial sea, which might not extend beyond twelve miles measured from the applicable baseline. It further provided that, in that fishing zone, the coastal State had full jurisdiction over the fishing and the exploitation of the living resources of the sea in the same manner and to the same extent as in its territorial sea. That, however, as laid down in article 5 of the eighteen-Power proposal, did not preclude States from concluding bilateral or multilateral agreements granting rights to foreign nationals to fish in that zone or in their territorial sea.

24. The representative of Canada had asked why a State should have a twelve-mile territorial belt if the same rights were available under the existing articles, meaning, presumably, article 24 of the 1958 Convention on the Territorial Sea and the Contiguous Zone. That article covered the right to control customs, fiscal, immigration or sanitary matters in the contiguous zone, a zone which under the new Canadian and United States proposal would not become exclusive for ten years and which, as the representative of France had pointed out, had not yet become law. The representative of Mexico had explained the difference between the sum total of the rights of a State under a six-plus-six formula and articles of existing conventions and the full exercise of sovereign rights; but assuming, for the sake of argument, that the material content of that sum total and of full sovereign rights in a maritime belt up to twelve miles was the same, it would still be necessary, in view of existing state practice, to find a formula for the delimitation of the territorial sea which took the twelve-mile limit into account. To ignore the legislation of all States with a territorial belt wider than six miles would mean ignoring the existing legislation of some twenty-five independent sovereign States. The flexible formula contained in the eighteen-Power proposal, in combination with other articles of existing conventions, gave each State the same total amount of rights while recognizing the existing differences in municipal law on the limits of the territorial sea due to differing geographical, economic, social, historic and political conditions. Together with the principle of reciprocity contained in article 3 of the eighteen-Power proposal, the formula would cover existing differences in rights without obliging the respective States to change their municipal law, an important consideration, since a reduction in the breadth of the territorial sea would meet considerably more internal opposition than a widening of the territorial belt. The representative of the United States said he had received strong protests from fishing interests in the United States at the changed position taken by the United States delegation in order to reach a compromise. A narrowing of the territorial belt would encounter far greater difficulties, since it involved more than private commercial fishing interests, and full sovereign rights were established rights under international law, whereas the exclusive fishing rights in the adjacent zone were *in statu nascendi* and thus open to modification.

25. There was a clear tendency for the twelve-mile limit to be consolidated by the normal process of international law-making — namely, custom created by state practice. The representative of Canada, in arguing that to all intents and purposes the six-plus-six formula, with the other rights, gave the same rights as a twelve-mile limit, had strengthened the case for the twelve-mile limit, which no one in the Conference, or outside it, had proved to be contrary to international law.

26. Article 3 of the eighteen-Power draft provided that if a State had fixed the breadth of its territorial sea and the contiguous fishing zone at less than twelve miles, it had the right, if it so wished, to exercise against any other State with a greater breadth of territorial sea or fishing zone the same sovereign rights or exclusive fishing rights as if it had established the same breadth of territorial sea or fishing zone as that other State. Consequently, a State with a territorial sea of less than twelve miles would not feel discriminated against by a State with a twelve-mile territorial sea. It would, vis-à-vis that State, have all the benefits of a broader territorial sea without the permanent obligations of the greater breadth. The principle of reciprocity on which the article was based, and which was well established in general international law, was a method of evolving a formula capable of reconciling the sharply conflicting interests revealed in the Conference, without requiring the respective States to change their territorial sea limits. The principle could, moreover, be applied irrespective of the eventual adoption of a rule on the breadth of the territorial sea and exclusive or near-exclusive fishing zones, so long as differences in the breadth of those limits existed. A State faced on two different coasts by countries with a different breadth of territorial sea could invoke article 3, and thus obtain equitable compensation for a *de facto* unequal position.

27. The establishment of a contiguous fishing zone under article 2 required a legislative measure under municipal law, while for the exercise of the right of reciprocity under article 3, no such legislative measure was required in regard to either sovereignty or fishing rights. The representative of Greece was entitled to his interpretation of that article, but it was surprising to hear retortion described as being contrary to international law.

28. It would appear that paragraph 3 of the joint Canadian and United States proposal had been drawn up under great pressure of time. Fishing was not an occupation that could be changed in a short time, since it was not only an occupation but a way of life. A period of ten years was too short for the amortization of ships or for adjustment to a new kind of fishing in new areas under different conditions. While the fishermen had ten years to adapt themselves to new fishing methods, they had the same period in which to take as much fish as possible from their old fishing grounds. The aim of the provision, to ensure the gradual abandonment of the rich old fishing grounds, might be defeated by the attraction of immediate cash profit. Nor was the provision of a ten-year period an agreeable one for the coastal State, so that it solved nothing and merely postponed the problem for another ten years.

29. The eighteen-Power proposal, with its three-to-twelve-mile formula, gave a rightful place to any breadth of territorial sea which could not be considered contrary to existing international law. It had the merit of including a six-plus-six formula, whereas the joint Canadian and United States proposal excluded all those States having a breath of territorial sea of more than six miles. Articles 3 and 4 were offered as a serious contribution to the alleviation of international conflicts and friction. Viewed in that light, he could not accept the opinion voiced by the representatives of the United Kingdom and Canada, who had failed to see the constructive features of the eighteen-Power proposal, and who had in effect stated that no serious attempt at a compromise had been made apart from the joint Canadian and United States proposal.

30. Mr. KIRCHSCHLÄGER (Austria) said that, at The Hague Codification Conference in 1930, the Austrian delegate had held the view that the breadth of the territorial sea should be kept to a minimum in order to maintain the freedom of navigation on the high seas. Again, at the 1958 Conference, the attitude of the Austrian delegation had been determined solely by the consideration that any extension of the breadth of the territorial sea would inevitably reduce the area of the high seas, which as *res communis* was for ever open to all nations whether they had direct access to the sea or not. Nothing had occurred since 1958 to cause his delegation to change that attitude. The principle of innocent passage could mitigate only in part the disadvantages of an increase in the breadth of the territorial sea. It had been repeatedly emphasized at the present Conference that the principle of innocent passage did not apply to aviation. The attitude of the Austrian delegation necessarily resulted, therefore, from Austria's geographical position and should be considered as the logical continuation of the traditional Austrian viewpoint.

31. The joint Canadian and United States proposal for a six-mile territorial sea, the minimum breadth within reach in present circumstances, appeared to come closest to the settlement which the Austrian delegation considered most equitable, and it would therefore vote in favour of that proposal. The Austrian delegation had also studied the proposals providing for a breadth of territorial sea up to a limit of twelve nautical miles. While it thought that those proposals were not in line with its interests, it appreciated some of the reasons for the proposals, and was convinced that they had been conceived with the best intentions. It would therefore abstain from voting on those proposals. As to the proposals and amendments providing for special situations, the Austrian delegation would examine them with great sympathy. The uniformity desirable for the basic principles did not exclude consideration of special cases.

32. Mr. BAIG (Pakistan) said that his delegation had been relieved at the submission of the new joint proposal (A/CONF.19/C.1/L.10) by Canada and the United States of America. The issues before the Conference, though controversial, were not difficult, and the differences between the States could be resolved amicably. He welcomed the fact that certain suggestions made by the Pakistani delegation at the Committee's 12th meeting, such as the limitation on historic fishing rights and the machinery for arbitration, had been introduced in the joint proposal. The compromise would involve real sacrifices by the United States, the Canadian and many other Governments, but without such sacrifices international agreements could not be reached. If the Conference continued to work in the same spirit, undoubtedly a generally acceptable solution would soon be found. He believed that the new proposal was not an attempt to shelve the issue, since it clearly aimed at a compromise that might secure general agreement and thus avoid the failures that had attended the Conference at The Hague in 1930 and the first United Nations Conference on the Law of the Sea held at Geneva in 1958.

33. While a transitional period was normally allowed for the affected party to make the necessary adjustments when existing rights were extinguished, ten years would be barely adequate. The surveys made by the fishing States had been extremely thorough and had rendered intensive fishing possible. In view of the alarming rate of increase in the world population, it was essential to maintain the level of optimum fishing over the transitional period until alternative fishing grounds were discovered and surveyed.

34. Eighteen States had submitted a revised proposal (A/CONF.19/C.1/L.2/Rev.1) providing for a territorial sea twelve miles in breadth. It should be remembered that if any country extended its territorial limits, corresponding action would be taken by other countries, and the same limitations and controls would then be encountered in the waters of those other countries. The freedom of shipping and aviation would thus be curtailed. That raised the question whether such action would be of any specific benefit to the smaller and newer countries. There would be no economic gain. The argument that a twelve-mile territorial sea was required for security was hardly sound. In modern warfare it would make very little difference whether a hostile fleet stood within or just without a twelve-mile limit.

35. The argument had also been adduced that ships would still enjoy the right of innocent passage, but the mere fact that controls could still be exercised in the outer six miles would oblige ships to take a longer route in order to avoid the risk of unforeseen stoppages. Furthermore, there was no corresponding right of innocent passage for aircraft over the territorial sea, and an aircraft would be breaking the law if it were compelled by bad weather or some similar cause to fly over territorial waters.

36. It was to the interest of newly established sovereign States to have a well-established and codified law of the sea rather than to permit the existing state of confusion to continue. The success or failure of the Conference might well depend on the stand taken by such States. It was now evident that the original proponents of the three-mile limit had advanced substantially towards the twelve-mile concept by accepting the twelve-mile fishing zone and the extension of the territorial sea to six miles. It behoved the proponents of the twelve-mile limit for the territorial sea to make a similar gesture in order to reach a compromise. The joint Canadian and United States proposal, in its present form, amply reconciled the legitimate interests of the coastal States with the fundamental freedom of the seas.

37. Mr. TOLENTINO (Philippines), introducing his delegation's amendment (A/CONF.19/C.1/L.5), said it was based on the contention that any rule governing the breadth of the territorial sea must take special cases into account and could not prejudice established rights. The amendment did not enter into the merits of the various views on the legal concept of historic waters, but some States, such as his own, mantained that certain areas of sea were historic waters and belonged to them.

38. He recalled that, in the Treaty of Paris of 10 December 1898 between Spain and the United States, the territorial limits of the Philippine archipelago had been defined specifically and the United States had asserted sovereignty and jurisdiction within that territorial boundary. A municipal law had subsequently been enacted to regulate fishing within those territorial waters. The Philippine Republic was not asserting sovereignty over the waters lying within those treaty limits merely because it wished to claim a wider belt of marginal sea around the archipelago, for while that boundary was in some places more than twelve miles from the coast, in other places it was less than three miles from the shore of the nearest island. It neither wished to claim more than the narrowest margin nor to surrender any portion of the wider margin within those treaty limits.

39. Other States besides the Philippines claimed historic waters, and it had obviously been for that reason that the 1958 Conference had almost uninamously adopted a resolution on the régime of historic waters,[2] requesting the General Assembly to arrange for the study of the juridical régime of historic waters, including historic bays. The General Assembly had accordingly adopted resolution 1453 (XIV), requesting the International Law Commission to undertake such a study. Consequently, historic waters did not fall within the scope of the present codification and any rule adopted by the Conference on the breadth of the territorial sea would not apply to such waters. That situation would obtain even if no express provision to that effect had been included in the Conference's rule, but his delegation considered it advisable to state the exception explicitly. In studying a rule, the recognized exceptions should be set forth at the same time, and not left to inference or interpretation. Thus, article 7 of the Convention on the Territorial Sea and the Contiguous Zone expressly stated that the provisions of that article should not apply to so-called " historic " bays. The reason why that exception had been expressly stated was that the Conference resolution on historic waters was not part of the codification then drawn up. In view of that precedent, it was only logical that an exception referring to historic waters in general should be included in the rule.

40. While making that contribution to the efforts of the Conference to reach a satisfactory solution of the problem before it, the Philippine delegation had deliberately refrained from taking a definite stand on the breadth of the territorial sea, since the Philippines would not be directly affected by such a decision, owing to its special position. That fact was in consonance with the legal principle that a subsequent general law could not modify or repeal a specific rule. Furthermore, the Philippines had no fishing fleets which visited the shores of other nations. Accordingly, its attitude towards the proposal before the Committee was flexible. It was fully aware, however, of the vital importance of reaching an acceptable solution which would bring about stability, and not uniformity, in the rule on the breadth of the territorial sea. It had therefore co-sponsored the sixteen-Power proposal (A/CONF.19/C.1/L.6) as the most practical and scientific solution.

41. Since the Philippine amendment had been submitted a number of the original proposals had been amalgamated and the Mexican (A/CONF.19/C.1/L.2) and sixteen-Power proposal (A/CONF.19/C.1/L.6) had been superseded by the eighteen-Power proposal (A/CONF.19/C.1/L.2/Rev.1), which restated the substance of the Philippine amendment. Accordingly, his delegation had co-sponsored the eighteen-Power proposal and would withdraw its original amendment.

The meeting rose at 12.50 p.m.

TWENTY-SIXTH MEETING

Tuesday, 12 April 1960, at 3 p.m.

Chairman: Mr. José A. CORREA (Ecuador)

Consideration of the questions of the breadth of the territorial sea and fishery limits in accordance with resolution 1307 (XIII) adopted by the General Assembly on 10 December 1958 *(continued)*

CONSIDERATION OF PROPOSALS (A/CONF.19/C.1/L.1, L.2/REV.1, L.7/REV.1, L.8 TO L.12) *(continued)*

1. Mr. GUDMUNDUR I GUDMUNDSSON (Iceland) thanked delegations for the understanding they had shown, both in the Committee and in private discussions, of his country's special position. For Iceland, fishery limits were a matter of life and death. He had found it necessary to speak again in the light of certain developments since he had spoken in the general debate at the 11th meeting, and in order to answer certain points raised during the discussion.

2. He could not pretend to welcome the joint proposal submitted by Canada and the United States of America (A/CONF.19/C.1/L.10), although, of course, the reasons for his dissatisfaction with it were entirely different from those stated by the United Kingdom representative at the 23rd meeting. Iceland could have accepted a narrower territorial sea, provided that fishery jurisdiction was adequately safeguarded, but so long as that was lacking his delegation would be forced to support any proposal containing proper guarantees, and accordingly to oppose the joint proposal.

3. As to the United Kingdom representative's criticism of the Icelandic proposal (A/CONF.19/C.1/L.7) at the 23rd meeting, the Government of Iceland could not agree that there had been a fundamental change in the situation since it had first put forward its proposal in 1958. The United Kingdom representative had gone

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[2] *Official Records of the United Nations Conference on the Law of the Sea*, vol. II, annexes, document A/CONF.13/L.56, resolution VII.

on to argue that at that time the proposal had been considered in relation to a six-mile exclusive fishery limit, but surely, apart from other proposals submitted to the first Conference, the Canadian delegation had already put forward at that Conference a six-plus-six-mile formula, and no one could have foreseen then what would be its fate.

4. In reply to the charges of vagueness, he emphasized that the Icelandic proposal was carefully limited: it would apply only to cases where the local population was overwhelmingly dependent upon coastal fisheries for its livelihood and economic development. Therefore it could not be interpreted as of excessively wide application, as the United Kingdom representative had suggested. The purpose of the proposal was to meet the interests of nations rather than those of individuals.

5. The proposal dealt only with preferential rights; Iceland was not trying to secure control over more sea than it could use, but simply to acquire a preferential position when it became necessary to limit the total catch for conservation purposes. Another special feature of the proposal was that it provided for the final assessment to be made by a body of independent experts.

6. At the 11th meeting, he had observed that so-called historic rights were, if not identical with, at least comparable to colonial rights. It was common knowledge that the three-mile limit had been maintained for so long because it had been to the advantage of powerful distant-water fishing States, enabling as it did their fishermen to sail as close as possible to the shores of other nations. Until recently such States had been able to impose their will on weaker ones. Fortunately, it was no longer possible for them to do so, and now that the injustice was at last being redressed the protestations about sacrifices of those States which had so long benefited from the situation had a hollow ring.

7. In justice, it must be admitted that the extension of fishery limits did affect populations which had been fishing in a given area and which would now be excluded from part of it. But surely the Conference was discussing, not the financial position of individuals but that of nations. In the latter connexion, attention should be drawn to the relative share of fisheries in the national economy of countries whose nationals had been wont to fish in Icelandic waters. He had not touched on the matter in his first statement, but, having heard so much about sacrifices and hardship, would refer the Conference to the second paragraph in the commentary to his delegation's revised proposal (A/CONF.19/C.1/L.7/Rev.1). He would add to what was said there that only part of the total catch of the countries in question came from Icelandic waters, and of that part again only a small fraction from the sea area lying between six and twelve miles from the coast.

8. Another fundamental fact which had been overlooked was that Iceland's present twelve-mile fishery limit in no way precluded foreign fishermen from fishing in Icelandic waters. That limit was not an impassable barrier, since fish could and did pass beyond it. In fact, most of the catch made by trawlers operating in Icelandic waters since the Second World War had come from areas more than twelve miles from the coast. If the Icelandic proposal were adopted, profitable fishing round the Icelandic coasts would still be possible for foreign vessels. His Government had repeatedly emphasized that the extension of Iceland's fishery limits to four miles in 1952 and to twelve miles in 1958 had had the beneficial effect of protecting spawning areas and nursery grounds, thereby assuring an increased catch for all. Had such measures not been taken, and had Iceland abided by the three-mile limit, fish stocks in Icelandic waters would have been ruined in a relatively short time, as indeed had occurred in some areas.

9. During the two world wars fish stocks in Icelandic waters had enjoyed valuable protection, owing to the almost complete absence of foreign trawlers from the area. Had it not been for that fact and the subsequent measures adopted by his Government, the situation would by now have been disastrous. Recent scientific investigation had shown that a further increase in cod fishing would be harmful, and would in fact be over-fishing. The cod stock was not providing what was virtually the maximum sustainable yield, and no substantial increase was to be expected. Limitations of total catch were therefore imminent. Those findings were based upon more than thirty years of scientific investigation of that particular stock, which was far and away the most important in Icelandic waters.

10. Another practical consideration, familiar to those with a knowledge of the conditions prevailing in fishing grounds, which must not be overlooked was the intolerable consequences of trawling in areas where other types of fishing gear, such as long lines and fixed nets, were also in use. Experience had clearly shown the need for protecting small boats using such gear, which were defenceless against the competition of trawlers, which ruined their equipment and prevented them from operating effectively. In that regard, the twelve-mile limit provided valuable protection to the small-boat fishing industry. The same consideration applied outside the twelve-mile limit, and, as stated in the commentary to his proposal, the possibility of taking such further measures must be to hand.

11. The United Kingdom representative had quoted figures purporting to prove that the present catch in Icelandic waters had recently fallen to such an extent that the British fishing fleet was apparently facing real disaster. However, the figures referred to one week alone — the first following the British trawler owners' decision to withdraw their trawlers from all Icelandic waters. Hence they proved nothing about the real issue, which was how much those trawlers would have caught had they respected Iceland's legislation and stayed outside the twelve-mile limit as other foreign nationals had done. Since the introduction of the twelve-mile limit, foreign trawlers had been fishing outside it, as had also most Icelandic trawlers, and good catches had been made. British trawlers might have done the same, instead of which they had departed on a so-called goodwill tour, quitting the Icelandic fishing grounds during the best fishing season in order to ensure that their catches fell by up to 89 per cent so as to provide the United Kingdom delegation with statistical arguments for use at the Conference. Moreover, while British trawlers had continued to fish inside the twelve-mile limit, under the protection of the Royal Navy, other large fishing nations, which had respected Iceland's regulations, had spent

comparatively large sums in looking for fishing grounds beyond the limit. Their search had been successful, and the new grounds had already provided a good yield.

12. He hoped his remarks would be received in the spirit in which they were made, and that Iceland's special problem would receive practical recognition: sympathy alone was not enough. His Government would welcome any suggestions for making its proposal clearer.

13. Mr. NGUYEN QUOC DINH (Viet-Nam) recalled that there were two proposals before the Committee advocating a breadth of twelve miles for the territorial sea: that of the Soviet Union (A/CONF.19/C.1/L.1) and that of the eighteen Powers (A/CONF.19/C.1/L.2/Rev.1), the latter a combination of the Mexican proposal (A/CONF.19/C.1/L.2) and that of the sixteen Powers (A/CONF.19/C.1/L.6), who had been joined by Venezuela. The system provided for in article 3 of the eighteen-Power text was a praiseworthy attempt to improve upon the basic twelve-mile formula, inspired by a desire to restore equality between States in accordance with the liberal suggestion made by the head of the Indonesian delegation at the 14th meeting. But so far as the essential element, the breadth of twelve miles, was concerned, nothing had been changed. Against those two proposals, which drew their inspiration from the same source, was set the joint Canadian and United States proposal (A/CONF.19/C.1/L.10), which advocated a breadth of six miles for the territorial sea, to which would be added a further six miles of exclusive fishing zone. It was that compromise proposal that enjoyed his delegation's support.

14. Many criticisms had been levelled against the joint Canadian and United States proposal, but in his opinion they were not justified. The proposal represented real progress inasmuch as from then on an exclusive six-mile fishing zone would be added to the first zone of six miles, corresponding to the breadth of the territorial sea. That was a happy idea, for it filled a gap whose existence had been noted by Professor Gidel, and subsequently by the International Law Commission. It was also important to note that there was nothing novel about a claim to an exclusive contiguous fishing zone. The only reason why it had taken a claim of such long standing so long to gain acceptance was that it was essentially peculiar to small, and especially to the new, States, which had only recently found themselves in a position to assert it in the concert of nations. The recognition of an exclusive fishing zone beyond the territorial sea was a triumph for the small and for the new States, and was in full harmony with the new requirements of the international community. He reminded the Committee that his delegation had already had occasion to make an impassioned plea for the recognition of preferential fishing rights, both at the first Conference and in its statement at the 3rd meeting of the present Committee. It was very satisfied with the response which the idea of such preferential rights had evoked.

15. It was the joint Canadian and United States proposal that seemed best to respect freedom of navigation, which was the fundamental aspect of the age-old principle of the freedom of the seas. Recognition of a contiguous zone, while ensuring respect for the rights of the coastal State, would place the minimum of constraint on navigation on the high seas.

16. The joint proposal also had the indispensable advantage of contributing to the codification of the rules of law. True, a six-mile limit would be only the maximum; but if it were recognized that the three-mile rule no longer held good, the play of variation would be extremely small. In practice, adoption of the proposal would put an end to the prevailing chaos, and the resultant reversion to order and law would be to the benefit of all States, large and small — perhaps even more so to the small ones.

17. The lack of unification in the field under discussion was a source of discrimination and, what was really serious, discrimination that worked to the advantage of the strongest States, which would be placed in a privileged position by the adoption of a twelve-mile limit. It was true that the eighteen-Power proposal sought to remedy that situation, but only at the price of introducing new complications which might add to the initial chaos inherent in the twelve-mile formula. The joint Canadian and United States proposal would happily close the gap left in the provisions of the 1958 Convention on the Territorial Sea and the Contiguous Zone. Thenceforth, the coastal State would enjoy, in the contiguous zone, a cluster of powers of considerable scope. Delegations which favoured the twelve-mile limit could of course ask whether the sum of those powers would be equal to those which the coastal State would enjoy if the outer six-mile zone were simply part of the territorial sea; and some had already replied to that question in the negative. In his opinion, however, the problem deserved profound thought. Those who demanded an extension of the territorial sea to twelve miles were moved by two cares: the creation of exclusive fishing rights and the establishment of a security zone.

18. As to the first preoccupation, the question arose whether exclusiveness would be affected by the provisions of paragraph 3 of the joint proposal. It should be noted that the text of that article allowed foreign fishing for a transitional period of ten years. That provision had aroused criticism, but in his delegation's opinion it represented the essential solution to a difficult problem. It took account not only of the interests of the coastal State but also of those of other States, whose legitimacy had been recognized by the Conference. In that respect, the eighteen-Power and the joint proposals differed only in the means of implementation, since article 5 of the eighteen-Power proposal could be interpreted as meaning that the interests of the non-coastal States must, where necessary, be protected by means of special, bilateral or multilateral agreements. In any event, the solution advocated in the joint proposal submitted by Canada and the United States seemed more logical than that provided in article 5 of the eighteen-Power text. Moreover, the institution of a transitional period was not really likely to affect the rights of coastal States. In truth, the joint proposal was less a compromise than an arbitral award.

19. As to the security zone, he would refer to the statement made at the 10th meeting by the representative of India, who had reminded the Conference that the small States still feared domination by the large ones, and therefore wished to have as wide a territorial sea as possible to make their defence secure. Other speakers had endeavoured to show that the defence of the security

zone was dependent upon a breadth of twelve miles for the territorial sea. In that connexion, the representative of Viet-Nam would like to recall that in the commentary on article 66, paragraph 4, of its draft articles on the law of the sea, the International Law Commission stated that the Commission had not recognized special security rights in the contiguous zone.[1] In so far as legitimate measures of self-defence against an imminent and direct threat to the security of the State were concerned, the Commission rightly referred to the general principles of international law and to the Charter of the United Nations. The protection of a coastal State, assured by its own resources in virtue of the provisions relating to the right of innocent passage, was often likely to be illusory, especially if the State was small. Very often the security of the State would be better safeguarded if the outer six-mile zone were placed directly in the keeping of the international community.

20. Where the exercise of other prerogatives in the matter of innocent passage was concerned, coastal States had invariably shown moderation and a liberal spirit, and disputes were relatively rare. That meant that so far as the coastal State was concerned those prerogatives were of secondary importance. Such an interpretation was in perfect harmony with the fundamental meaning of the concept of innocent passage, for the purpose of that concept was to ensure that the collective nature of the international public domain prevailed over the private nature of the territorial sea; it followed that the concept was made not for the coastal State but for the users of the high seas.

21. The sole question at issue was whether, in order to uphold certain national prerogatives, it was necessary to extend the breadth of the territorial sea to twelve miles, thus detracting from the principle of freedom of navigation. He hoped that a general agreement would be concluded, so that the progressive solutions which had been proposed could be put into effect, and that even the most intransigent Governments would accept the sacrifice of a few modest prerogatives.

22. Mr. GARCIA AMADOR (Cuba), introducing the Cuban draft resolution (A/CONF.19/C.1/L.9), said that his delegation was still convinced that the only possible way of reconciling all the various points of view put forward at the Conference lay in the recognition of preferential rights in favour of the coastal State, at least for so long as there was no genuine and spontaneous general agreement on the breadth of the territorial sea.

23. He urged the Conference to adopt the Cuban draft resolution as the most practical, the fairest and technically the best-founded method of solving the difficulties before the Conference. He could do so without immodesty, because the proposal had its origins in earlier proposals, introduced by other delegations in the Third Committee of the first Conference in 1958, the committee which had been entrusted with the questions of fisheries and the conservation of the living resources of the sea. He wished to refer specifically to the proposals submitted jointly on that occasion by Chile, Costa Rica, Ecuador and Peru,[2] by the Philippines and the Republic of Viet-Nam,[3] by Burma, Chile, Costa Rica, Ecuador, Indonesia, the Republic of Korea, Mexico, Nicaragua, the Philippines, the Republic of Viet-Nam and Yugoslavia,[4] by Iceland [5] (a proposal which was similar, up to a point, to the Icelandic proposal at the present Conference), and lastly to the draft resolution submitted by Ecuador,[6] which had been the basis of the resolution adopted by the first Conference on special situations relating to coastal fisheries.[7]

24. The Cuban draft resolution recommended the conclusion of an additional protocol to the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas that would serve to establish the preferential rights of the coastal State in fisheries in the high seas. It was true that the main purpose of the Convention in question was to regulate conservation, but its title made it abundantly clear that it related also to the exercise of the right of fishing in the high seas. The proposed additional protocol would therefore not be out of place in it.

25. The point from which the Cuban draft resolution departed was the recognition by the first Conference, in resolution VI, of the preferential character of the requirements of those " countries or territories whose people are overwhelmingly dependent upon coastal fisheries for their livelihood or economic development " and of those " whose coastal population depends primarily on coastal fisheries for the animal protein of its diet and whose fishing methods are mainly limited to local fishing from small boats ". But in addition to those exceptional cases — for which incidentally resolution VI of the 1958 Conference did not provide any effective remedy — the requirements and interests of other coastal States in the conservation and exploitation of the resources of the sea could also be preferential in nature — for instance, when their nationals regularly fished in areas of the high seas adjacent to the territorial sea, so that the fishery resources of those areas were important to them for economic development purposes or food supply. The Cuban draft sought to confer recognition on the preferential character of the requirements of all the States concerned, and he submitted that it did so in the only feasible way.

26. The effect of the Cuban draft resolution, if adopted, would be that, when the unilateral measures of conservation adopted by the coastal State consisted in limiting the total catch of a stock or stocks of fish, subparagraph 2 (*c*) of article 7 of the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas would be made inapplicable in so far as that was necessary in order to take due account of the special requirements and interests of the coastal State.

27. His delegation's draft resolution referred to the high seas which extended seaward from the outer limit of the territorial sea. Unlike the Icelandic and other proposals, it did not seek to establish a contiguous fishing zone. In addition to the technical and legal difficulties inherent in such a course, no plausible economic reason

[1] *Official Records of the General Assembly, Eleventh Session, Supplement No. 9*, p. 39.

[2] *Official Records of the United Nations Conference on the Law of the Sea*, vol. V, annexes, document A/CONF.13/C.3/L.41.

[3] *Ibid.*, document A/CONF.13/C.3/L.60.

[4] *Ibid.*, document A/CONF.13/C.3/L.66 and Rev.1.

[5] *Ibid.*, document A/CONF.13/C.3/L.79/Rev.1.

[6] *Ibid.*, document A/CONF.13/C.3/L.89.

[7] *Ibid.*, vol. II, annexes, document A/CONF.13/L.56, resolution VI.

had so far been adduced to justify the complete exclusion of foreign fishermen from part of the high seas. Such exclusion would be tantamount to preventing in an arbitrary manner the exercise of a legitimate right, the right to fish, guaranteed by article 2 of the 1958 Convention on the High Seas. In addition, it would be detrimental to the food supply of mankind as a whole.

28. The Cuban dreft resolution sought to empower the coastal State to restrict the fishing of foreign fishermen, but only where such limitation was genuinely necessary. Unlike the proposals for an exclusive fishing zone, it held no suggestion of automatic or general exclusion of foreign fishermen. The coastal State would merely have the potential right to order such exclusion, subject to the safeguards contained in the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas. Moreover, an exclusive fishing zone would necessarily be limited in breadth, and would to that extent fail to meet the real requirements of the coastal State.

29. The proposed additional protocol would apply only to cases where a coastal State adopted unilateral measures of conservation consisting in limitation of the total catch of a stock or stocks of fish. Only with respect to the limitation of total catch were there grounds for recognizing the special requirements and interests of the coastal State and hence the possibility of some measure of exclusion of foreign fishermen. There could be no question of discrimination against foreign fishermen in the application of other conservation measures, such as those relating to fishing methods.

30. The Cuban draft resolution also provided a remedy for possible abuses by the coastal State. The proposed additional protocol would suspend only sub-paragraph 2 (*c*) of article 7 of the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas, leaving all the other provisions intact. He drew special attention to articles 9 to 12 of the Convention, which provided for the settlement of disputes and safeguarded the rights and interests of the nationals of States other than the coastal State. The legitimate interests of foreign fishermen were thus adequately protected whenever they did not threaten the optimum sustainable yield. Needless to say, technical difficulties might arise in determining the extent to which limitations upon fishing by foreign fishermen were necessary. But such problems were not insoluble, and the Conference could consider what steps could be taken to find a solution to them.

31. The need to protect the interests of under-developed countries had been strongly argued, and it had been suggested that that purpose might be achieved by extending the breadth of the territorial sea or by establishing an exclusive fishing zone. With regard to the first possibility, it had been amply demonstrated that, first, there were no valid grounds for suggesting that the security of the coastal State required a territorial sea exactly twelve miles broad, and, second, that there were much better safeguards under the present international organization for the safety of small States than the mere extension of the territorial sea. As to the second course, it was clear that the exclusive fishing zone did not meet the real needs of all the coastal States. On the other hand, the Cuban formula, which involved the recognition of preferential rights, offered the maximum advantages with the minimum of inconvenience.

32. Although the Cuban draft resolution was not necessarily dependent on the results of the voting on the other proposals before the Committee, there could be no doubt that they would have a great bearing on its timeliness. The reason therefor was simple: the Cuban draft resolution evaded the issue of the breadth of the territorial sea. Without, therefore, formally withdrawing it, he requested that it should not be put to the vote in Committee, and reserved his delegation's right to re-introduce it at a plenary meeting of the Conference.

33. Mr. RIPHAGEN (Netherlands) said that his delegation would vote for the joint Canadian and United States proposal (A/CONF.19/C.1/L.10); for the reasons he had already given, it could not support any proposal permitting the breadth of the territorial sea to be fixed at twelve miles.

34. But that was not to say that the Canadian and United States proposal was in accordance either with his country's national interests or with those of the international community as a whole. As he had asserted in his general statement at the 6th meeting, geographical proximity to fishing grounds on the high seas did not in itself constitute an adequate legal basis for exclusive fishing rights, and any solution to the fisheries problem ought to take into account the special circumstances of every individual case, viewed in the light of the needs of the coastal and fishing States involved. The joint proposal did not make provision for special situations, but established a general rule which favoured the interests of the coastal State. His delegation would nevertheless support it, because it was likely to command the required two-thirds majority, and because its adoption seemed to be the only way of averting the failure of yet another attempt to establish a rule of international law governing the breadth of the territorial sea.

35. His delegation did not believe that, if adopted by the Conference, the joint proposal would automatically settle all fishery problems, or indeed, that it was intended to do so. Many delegations which had supported it had given encouraging signs of willingness to conclude, by bilateral or multilateral negotiation, fishery agreements that would take special circumstances into account and would therefore be more equitable than any general rule could ever be. He accordingly hoped that, once the Conference had laid down such a rule, the coastal and fishing States concerned would adapt their fishing arrangements to the needs of each particular situation.

36. Mr. PECHOTA (Czechoslovakia), explaining his delegation's attitude to the proposals under consideration, said that at the 7th meeting he had made known the reasons for which it supported a delimitation of the territorial sea between three and twelve nautical miles, combined with the option of establishing an exclusive fisheries zone up to the same outer limit. Accordingly, it considered that the Soviet Union proposal (A/CONF.19/C.1/L.1) and the very similar original Mexican proposal (A/CONF.19/C.1/L.2) offered the most appropriate solutions, and fully supported the later eighteen-Power proposal (A/CONF.19/C.1/L.2/Rev.1), which provided for the equitable and satisfactory regulation of the issues at stake. The aforementioned proposals were based on full recognition of the inalienable rights and interests of coastal States, reconciled the principle of their sovereignty

with that of the freedom of the high seas, and were in harmony with the well-established practice of States in regard to the delimitation of their territorial sea, which had created the principles at present applied.

37. There could be no doubt that the twelve-mile limit alone could provide a foundation for a universal rule of law. Any other formula, even though it might gain temporary support at the Conference, would inevitably remain a dead letter, since it would be unable to withstand the application of the twelve-mile rule which had gained a firm footing both in practice and legislation and answered the real needs of States.

38. Efforts to circumscribe the application of the twelve-mile rule, which were apparently prompted by strategic, political and economic considerations, could not be expected to prosper in modern times, and it was essential to realize that in an age of intense and world-wide political, economic and social development that was particularly marked in areas that had hitherto been politically and economically isolated or subject to colonial rule, the needs and interests of no member of the international community could be overlooked. Failure to take the rights and interests of a considerable number of States into account when establishing rules governing the breadth of the territorial sea and fishing zone would have most deplorable effects on the development of international co-operation and the rule of law in regulating relations between States.

39. The authors of the joint proposal (A/CONF.19/C.1/L.10) had claimed that it was a compromise between the original United States and Canadian proposals, and they, together with some of their supporters, had reiterated that it would entail heavy sacrifices, which had been accepted for the sake of agreement. In the present context, the only action that could be described as a sacrifice was the surrender by a government of part of its inalienable rights for the common good. If a right was to be regarded as definite jurisdiction in the prositive sense — as, for example, sovereignty over the territorial sea — proposals envisaging a twelve-mile limit required no sacrifice from any State, since none was obliged to modify its laws on the territorial sea, or to give up any part of its territory and with it certain inalienable rights pertaining to defence and to the exploitation of the living resources of the sea. On the other hand, the joint proposal would demand disproportionate sacrifices from a large group of States, since it provided for a maximum territorial sea of six miles and safeguarded the so-called "historic" fishing rights of third States in the contiguous fishing zone without offering any *quid pro quo.*

40. Enough had been said during the general discussion about the importance to coastal States of a twelve-mile territorial sea on security grounds. Many representatives, particularly those of countries under no threat, had contested that argument, but unavailingly. The sole and best qualified judge of problems connected with defence and sovereign rights was the State concerned. The significance of defence considerations in determining the breadth of the territorial sea had been admirably expounded by, among others, the representatives of the United Arab Republic (17th meeting), India (10th meeting), Ethiopia (18th meeting), and especially Iran (17th meeting).

41. Advocates of the narrowest possible territorial sea commonly adduced the specious argument that the freedom of navigation, which was of vital concern to the international community, could best be safeguarded by extending the area of the high seas. That argument had already been convincingly refuted, but he would emphasize that neither the Soviet Union nor the eighteen-Power proposal provided for automatic extension of the territorial waters of all States to twelve miles, and that, in any event, the difference between a six-mile and a twelve-mile territorial sea, in terms of a reduction in the extent of the high seas, would have no appreciable effect on the régime of the latter. On the other hand, such a zone was vitally necessary to many coastal States for security and economic reasons. Moreover, an extension of the territorial sea to twelve miles would not harm merchant shipping, since vessels of all States enjoyed the right of innocent passage through such waters. Merchant ships had in fact been molested on the high seas, although international law guaranteed absolute freedom there.

42. The fact that the joint Canadian and United States proposal recognized the concept of the so-called " historic " or " acquired " rights of fishing States in the contiguous fishing zone of coastal States clearly showed that its sponsors had finally abandoned the idea of an exclusive fishing zone, which the Canadian representative had claimed to lie at the root of his delegation's original proposal. The continued exercise of such acquired rights for a period of ten years would, in practice, amount to their virtual perpetuation when viewed in the light of the present tempo of political and economic development. Many countries which had hitherto been obliged to allow their marine resources to be exploited by foreign fishing fleets justifiably regarded the imposition of the so-called historic rights of foreign States as highly injurious to their developing national economy. Many so-called under-developed countries were making rapid economic progress, and would be capable of organizing national trawler fleets and fish-processing plants in a relatively short time. He believed that the Canadian delegation had at one time shared that view, for, when submitting its original proposal (A/CONF.19/C.1/L.4) at the 5th meeting, the Canadian representative had criticized the concept of so-called historic rights. It was a pity that Canada had later abandoned that position. The concept of acquired rights, as embodied in the joint proposal, was a mere legal fiction reminiscent of the generally discredited theory, put into practice by certain Powers, that the natural wealth of non-European regions should be predominantly exploited by economically advanced countries, even though that might be detrimental to the interests of its rightful owners.

43. His delegation did not share those views, but believed, like most other delegations, that every State was entitled to exercise exclusive sovereignty over its own natural resources, including the living resources of its coastal waters. That view was based on the generally accepted principle of the right of nations to self-determination, and had been reflected in decisions of the United Nations General Assembly — for instance, in resolution 626 (VII), adopted on 21 December 1952.

44. His delegation would vote for the Soviet Union and eighteen-Power proposals, because they recognized the legitimate interests of all States, took full account of the political and economic conditions prevailing in the

world and were based on the principle of strict non-discrimination. It could not support the joint Canadian and United States proposal which did not provide a satisfactory solution to the problems before the Conference. It reserved the right to deal at a later stage with the other proposals before the Committee.

45. Mr. CHACON PAZOS (Guatemala) said that his delegation fully appreciated the magnitude of the political and economic sacrifices which many countries were prepared to make; that commendable spirit of conciliation was a good omen for the success of the Conference. Guatemala, too, was prepared to make sacrifices as its contribution to the joint efforts to establish a definite rule of international law on the important questions before the Conference. Accordingly, although Guatemala had, more than twenty-five years ago, fixed the breadth of its territorial sea at twelve nautical miles, and had maintained that delimitation uninterruptedly ever since, it was prepared to support paragraphs 1, 2 and 4 of the joint Canadian and United States proposal (A/CONF.19/C.1/L.10). Accordingly, if the formula embodied in that proposal came to be accepted as a rule of international law, Guatemala would renounce the outer six miles of its territorial sea, retaining therein only its exclusive fishing rights, in addition to a measure of jurisdiction in fiscal, immigration, public health and cognate matters.

46. His delegation was unfortunately unable to support paragraph 3 of the joint proposal, although some of its provisions also entailed sacrifices for certain States, and although his delegation recognized the basic justice of the ten-year period of grace granted to foreign fishermen to enable them to adapt themselves to their subsequent exclusion from the contiguous fisheries zone. Paragraph 3 only covered the case of States which had hitherto maintained a territorial sea not more than six miles in breadth and which, by virtue of a new rule of international law, would thenceforward enjoy exclusive fishing rights in the outer six-mile zone. That provision took no account of the case of countries like Guatemala which, over the past five years and more, had exercised factual jurisdiction over a territorial sea more than six but less than twelve miles broad. That delimitation, within the permissible maximum breadth of twelve miles, had not been contrary to international law, as the International Law Commission itself had recognized, yet those countries would be asked to renounce the outer six miles of their territorial sea. It would be unfair to require of them that they at the same time accept as legitimate, even for a limited term, foreign activities which had clearly been illegal previously, and in many cases, such as that of Guatemala, a source of grave international difficulty. For those reasons, paragraph 3 as it stood was unacceptable to the Guatemalan delegation.

47. In an endeavour to reconcile those divergent viewpoints to the greatest possible extent, his delegation had submitted an amendment (A/CONF.19/C.1/L.12) to paragraph 3 of the joint Canadian and United States proposal. The amendment would insert after the words " Any State whose vessels have made a practice of fishing " the phrase " in a lawful manner and without opposition from the coastal State ". The right to continue to fish in the contiguous zone for a period of ten years would therefore not obtain if past fishing had constituted an offence at law or if it had given rise to protests by a coastal State which, by virtue of its municipal legislation, had declared the sea area in question a part of its territorial sea without thereby violating the international law on the subject.

48. The Guatemalan amendment would not prejudice the legitimate rights of foreign fishing industries or those of the thousands of persons employed by them, but would protect those States which, chiefly because of their lack of effective means of supervision and enforcement, had in the past been the victims of depredations committed by certain irresponsible commercial concerns. He was sure that adoption of the Guatemalan amendment would help to rally a number of other delegations to the side of the joint proposal.

49. Having, subject to the point covered by his amendment, made up its mind to support the joint proposal, his delegation would abstain from voting on all other proposals in the hope of thereby facilitating the work of the Conference. Its abstention was not to be interpreted as expressing disapproval of the terms of those proposals, many of which his delegation would have liked to see carried; but it was clear that the joint Canadian and United States proposal was the only balanced compromise before the Committee, and the only one which, with the minor amendment proposed by his delegation, was likely to obtain the necessary two-thirds majority.

50. His delegation hoped that the Conference would approve a rule of international law governing the breadth of the territorial sea and fishery limits, but did not wish the adoption of such a rule to be a source of friction between States because of the bestowal of the accolade of legal recognition on unlawful acts. As short a period as ten years could suffice to bring about a deterioration in the good relations existing between certain States if that were done, and the final outcome would be a step backwards in peaceful co-existence among nations instead of a real step forward in the rule of law.

The meeting rose at 5.40 p.m.

TWENTY-SEVENTH MEETING

Wednesday, 13 April 1960, at 10.15 a.m.

Chairman: Mr. José A. CORREA (Ecuador)

Consideration of the questions of the breadth of the territorial sea and fishery limits in accordance with resolution 1307 (XIII) adopted by the General Assembly on 10 December 1958 *(continued)*

CONSIDERATION OF PROPOSALS (A/CONF.19/C.1/L.1, L.2/REV.1, L.7/REV.1 AND L.8 TO L.12) *(continued)*

1. Mr. BARNES (Liberia) said that his delegation would vote in favour of the joint proposal tabled by Canada and the United States (A/CONF.19/C.1/L.10), which represented a diligent and honest effort by its sponsors to secure the success of the Conference, since it was

conceived in a spirit of compromise. It was difficult to discern a similar spirit in the steadfast and unchanged positions of the protagonists of the twelve-mile rule.

2. The joint proposal by Canada and the United States, limiting the territorial sea to a maximum of six miles, offered adequate security to a coastal State, yet preserved the sea as the common highway of all mankind, thus maintaining maximum freedom of the seas for navigation. The security of coastal States appeared to be the dominant motive for an extension of the territorial sea. In a six-mile territorial sea, the effective control necessary for the maintenance of security would not be the burden which a twelve-mile territorial sea would impose. The absolute right of transit of merchant ships through many international shipping routes was preserved by the extension of the territorial sea to six miles, whereas in a twelve-mile territorial sea that absolute right became the qualified right of innocent passage. Several representatives had said that, in the avoidance of the exercise of that right, merchant ships navigating beyond the widened territorial sea would necessarily make longer and less economical runs, thereby increasing shipping rates. Liberia, with its important interest in international shipping, could not support any proposal that would restrict freedom of navigation by converting the absolute right of free transit for merchant ships into a qualified right, nor could it abstain on that question.

3. The Liberian delegation welcomed the provision, in paragraph 3 of the joint Canadian and United States proposal, for a ten-year period to give the distant-water fishing States reasonable time for readjustment. A period of ten years might not satisfy all coastal and distant-water fishing States, but that was inevitable, since a compromise could satisfy neither party and pre-supposed sacrifice.

4. He urged all delegations not to look upon the Conference as a theatre where two divergent views had met to measure their strength, but as an opportunity to contribute to the lessening of international tension and the preservation of world order and peace.

5. Mr. SHUKAIRY (Saudi Arabia) said he would confine his remarks to the Canadian and United States proposal (A/CONF.19/C.1/L.10). While it was gratifying to observe that those two delegations had succeeded in bridging their differences, it should be noted that the process had not involved any change in their original position, the advocacy of a six-mile breadth for the territorial sea. In his introduction of the joint proposal, the United States representative had refrained from mentioning any of the arguments that had been advanced in support of its thesis during the general discussion; he had done wisely because those arguments had all been refuted and the weight of legal, economic and political considerations had been proved to be overwhelmingly on the side of a twelve-mile, rather than a six-mile limit. Instead, the United States representative had contended that a six-mile territorial sea was not in all cases merely double the size of a three-mile sea; that novel argument had not entered the minds of the delegations of smaller nations, probably because they had not developed any feeling of domination over the high seas, but considered that, in the case of property held in common, gains and losses would be felt by all. It would seem from the United States representative's argument that the whole question boiled down to the relative areas of the high seas and territorial waters; but the area of water represented 73 per cent of the earth's surface, while the land area was only 27 per cent. Man had struggled from time immemorial to bring coastal waters under his domain and to harness the high seas for navigation, and his encroachment on the sea was a process which could neither be stopped nor retarded. The reduction of the high seas, upon which the United States representative based his case, corresponded to the necessities of life and had continued since before the establishment of any limits whatsoever.

6. With regard to the Canadian representative's explanation concerning the proposed fishing zone, although the proponents of a twelve-mile breadth for the territorial sea admitted the right of States to exclusive fishing within that limit, they could not recognize the existence of a fishing zone as such. There was no international jurisprudence which defined any specific coastal fishing zone: fishing had always been one of a set of rights enjoyed in the territorial sea, whatever its limits. Exclusive coastal fishing beyond the limits of the territorial sea was therefore inconceivable, because exclusive rights must have some basis. While it might be argued that the Conference could establish a new rule, it was the quality of its international legislation that counted, and not its capacity to make such legislation.

7. In his opinion, having accepted a breadth of twelve miles for a fishing zone, the Canadian and United States delegations were bound by logic, reason and common sense to accept a twelve-mile limit for the territorial sea. There was no precedent in any Anglo-American sources of international law for a fishery limit of twelve miles; that figure would be arbitrary if it were not connected with the twelve-mile limit proposed for the breadth of the territorial sea, and the Canadian and United States delegations had therefore tacitly accepted that limit as desirable. Contrary to the Canadian representative's arguments, the extension of the territorial sea to twelve miles was not motivated solely by a desire to control fisheries, since fishing disputes between States had invariably arisen in respect of fishing beyond the territorial sea. The inevitable conclusion was that a twelve-mile fishing zone was inseparable from a twelve-mile territorial sea, and that recognition of the former led *ipso facto* to recognition of the latter.

8. The Canadian representative had observed that, while agreement on the desirability of a twelve-mile fishing zone was almost unanimous, there was still a wide difference of opinion concerning the breadth of the territorial sea. That position of simultaneous unity and disunity was, however, anomalous in view of the inseparability of the two questions. Unity on the question of the fishing zone was in fact lost in the disunity on the breadth of the territorial sea. The Canadian and United States proposal was an integrated whole and his delegation, for one, found it entirely unacceptable.

9. The purpose of the Conference was to establish a rule of law. The joint Canadian and United States proposal might be adopted by a majority and become a convention open for signature, but it could not become law unless it were generally accepted. If the signatories chose to establish a six-mile rule, they would be free to do so, but other States would abide by the twelve-mile limit

that they had established. It was being said that the twelve-mile rule was doomed to failure and that the six-mile proposal was the only alternative. While various types of pressure could be exercised to obtain the necessary votes, the deep breach between the two positions could not be healed by a mechanical decision. The position of the advocates of a six-mile limit was not one of compromise or conciliation. Thus, the United Kingdom representative who had eloquently urged compromise showed a complete lack of that spirit in dealing with the problems of Iceland; at the same time, he had asked the delegations which favoured the twelve-mile limit what compromise they had to offer.

10. In evaluating a compromise, the starting point had to be taken into account. The advocates of the six-mile limit claimed that they had begun with a three-mile breadth of territorial sea. Nevertheless, it had been proved during the debate that the three-mile limit had never been definitely established in the United States, in France or in the United Kingdom, and that those States had differed widely in their interpretations of the freedom of the seas. On the other hand, the eighteen-Power proposal (A/CONF.19/C.1/L.2/Rev.1) offered equal opportunities for all and protected the interests of all; its sponsors claimed no privileges that were denied to any other States. The Canadian and United States proposal was prejudicial to the interests of other States and was, moreover, not practicable: it would be impossible, for example, to force the Soviet Union to accept the six-mile limit as a rule of law. Furthermore, many small nations had established a twelve-mile limit many years previously. An international rule of law could not suit the interests of some nations only. The economic, political, legal and security considerations involved all militated in favour of the twelve-mile rule.

11. Mr. TUNKIN (Union of Soviet Socialist Republics) said that the general debate had been useful in clarifying the positions of various States. There were now three basic proposals before the Committee, reflecting two positions. The USSR proposal (A/CONF.19/C.1/L.1) and the eighteen-Power proposal (A/CONF.19/C.1/L.2/Rev.1) provided for a rule of international law under which every State could expand its sovereignty to a limit of twelve nautical miles, depending upon its needs and circumstances, while the Canadian and United States proposal (A/CONF.19/C.1/L.10) provided for a territorial sea of six miles, plus a fishing zone of six miles.

12. The supporters of the latter proposal used economic and legal arguments against the twelve-mile limit. From the economic point of view, they asserted that a twelve-mile limit would create great difficulties for navigation and air communications; but those arguments were refuted by the provisions concerning innocent passage and passage through straits of the 1958 Convention on the Territorial Sea and the Contiguous Zone, and there had been no instances of the hampering of air communications as a result of the establishment by many countries of a twelve-mile limit. From the legal point of view, many speakers had claimed that the establishment of the twelve-mile limit was prejudicial to the principle of the freedom of the high seas. That argument was invalid, however, since there had been no attempt during the second Conference to amend the principle enshrined in the 1958 Convention on the High Seas. The assertion that there was a connexion between the question of the breadth of the territorial sea and the principle of the freedom of the high seas was correct, but the implication that an extension of territorial waters would encroach upon the high seas was a vast exaggeration.

13. The weakness of the arguments in favour of the Canadian and United States proposal arose from the fact that they did not reflect the real motives of the supporters of a six-mile limit. A rule of law was not a technical rule of behaviour: it had, rather, a social content and reflected specific social interests and aspirations. The underlying purpose of the six-mile rule was to enable certain maritime Powers to approach the shores of other States and thus to influence their policy and domestic affairs, contrary to the provisions of the United Nations Charter. Thus, the six-mile rule constituted a refusal to recognize the legitimate rights of States to security and to protection of their national fisheries. Adoption of the twelve-mile rule, on the other hand, would take into account the political, economic, security and legal interests of all countries. Where defence was concerned, some speakers had asserted that the breadth of the territorial sea would have no significance in times of war, owing to modern technical developments. Even that assertion applied only to large-scale wars and not to local conflicts; in any case, the Conference should not be concerned with the possibility of war. There had been many examples of warships cruising near the shores of foreign countries in peacetime and exerting pressure on them. The United States representative had said that twelve miles was further than the eye could see; that was an important point, since pressure could be exercised through the psychological effect of seeing large, menacing warships off the shore. It was noteworthy that the supporters of the twelve-mile limit were either the weaker States or those which did not send their warships to foreign shores.

14. With regard to economic rights, it was particularly important for underdeveloped countries to be entitled to prohibit foreign ships from fishing within twelve miles of its shores, if it so desired. The Canadian and United States proposal ostensibly recognized that right, but then withdrew it by establishing the six-mile fishing zone in which the coastal State would not possess full sovereign rights; that was why the text had been called the " six, plus six, minus six proposal ". When the French representative had asked why such rights should be given to States which did not fish off their own shores, the Sudanese representative had replied that the economic weakness of certain countries was an additional argument in favour of the twelve-mile rule, and the Iranian representative had rightly pointed out that States which were unable to exploit their fisheries to the full might do so in future. If under-developed countries were not given the right to develop their fisheries, it was hard to see how they could compete with the well-equipped fishing fleets of the great maritime Powers.

15. The advocates of the twelve-mile rule had been accused by several speakers of unwillingness to compromise, and the Canadian and United States joint proposal had been praised as an example of conciliation. That argument, however, merely showed a mechanical

approach to the whole question. The only compromise in the joint proposal was one between the Canadian and United States positions: from the international point of view there was no compromise. It was proposed to reach a compromise at the expense of States which had already established a twelve-mile limit, but they could not be asked to renounce a breadth of sea over which they already had territorial jurisdiction. Furthermore, such a compromise could be reached only at the expense of the legitimate rights of States which were trying to protect their shores and develop their fisheries. Any State which wished to help under-developed countries could do so by recognizing their right to expand their fisheries within a twelve-mile limit. That was the only basis on which agreement could be reached.

16. The problems before the Conference could be settled only by taking into account real situations and trends of development. The fact that fourteen States had extended their territorial seas to twelve miles since 1945 was not fortuitous, but was due to changes in the international situation and in technical progress. The Conference should not cling to obsolete concepts, but should look forward, as it had done in 1958 in the case of the Convention on the Continental Shelf. The first Conference had taken a bold step forward in providing that the coastal State exercised over the continental shelf, defined as the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea to a depth of 200 metres or more, sovereign rights for the purpose of exploring it and exploiting its natural resources. Obviously, not all States needed that provision, and yet it was provided in article 2 that the rights referred to were exclusive in the sense that, if the coastal State did not explore the continental shelf or exploit its natural resources, no one might undertake those activities or make a claim to the continental shelf without the express consent of the coastal State. In view of that far-reaching provision, there seemed to be no reason to reject a progressive proposal to protect the legitimate rights of States within a twelve-mile limit. The establishment of such a rule, which took existing circumstances and future trends into account, would be an important step in the development of international law.

17. The Soviet Union delegation had modified the proposal it had made at the 1958 Conference to take into account the comments made by various delegations at that time. In the same spirit of co-operation, it would now withdraw its own proposal (A/CONF.19/C.1/L.1) in favour of the eighteen-Power proposal, which incorporated the basic provisions of its own text.

Mr. Sörensen (Denmark), Vice-President, took the Chair.

18. Mr. GARCIA HERRERA (Colombia) said his Government's position with regard to the breadth of the territorial sea and fishery limits could be summed up rapidly. Since 1923 the breadth of the territorial sea had been fixed by law at twelve miles; at the first United Nations Conference on the Law of the Sea, Colombia had supported proposals to fix that breadth as a general rule of international law. It had not recognized and did not recognize the legal validity of so-called historic rights, for well-grounded reasons which had not so far been refuted. It supported the general principle of the freedom of the high seas, and accepted only such restrictions on it as were established in international law. It had not accepted or demanded exclusive fishing zones beyond the territorial waters of coastal States; it did, however, recognize in its favour the existence of certain preferential rights. The codification of international law should be the result of the agreement of a majority of States, and procedures for peaceful settlement should be compulsory in all cases of dispute or conflict.

19. As Colombia was in favour of conciliation in all circumstances of international life, and considered compromise as the most effective method of reaching equitable and satisfactory solutions, there should be no surprise that the Colombian delegation, despite its domestic legislation and the attitude it had taken at previous conferences in favour of extending the breadth of the territorial sea to twelve miles, had decided, even before the Second United Nations Conference on the Law of the Sea had opened, that it would be prepared to support the original Canadian proposal (A/CONF.19/C.1/L.4) as closest to the present requirements of international order and the nearest to a compromise solution. The proposal now submitted jointly by Canada and the United States (A/CONF.19/C.1/L.10) was a further step towards the required compromise on the territorial and fishery limits. Strong assertions had been made that the proposal was far from being a compromise formula, but the Colombian delegation could not agree. The two countries which had merged their original proposals, like others which had lent their support to the resulting compromise formula, had always held firmly to the tradition of the three-mile limit. To double the breadth of the territorial sea and then add six more miles as an exclusive fishery zone, bringing the total up to twelve miles, was clear evidence of a spirit of compromise.

20. In the original Canadian proposal there had been no reference to so-called historic rights, whereas the original United States proposal (A/CONF.19/C.1/L.3) had offered to recognize for all time the rights of States to continue to fish in the exclusive fishery zone of other States, if they had made a practice of doing so during the period of five years immediately preceding 1 January 1958. The compromise formula merely established a transitional period of ten years from 31 October 1960, after which the fishing rights claimed by non-coastal States would cease. It could not be said that a stipulation of that sort did not entail reciprocal concessions. If to renounce the exercise for all time of an alleged right and to accept in exchange a maximum period of ten years was not an appreciable concession, the word concession had no meaning. The Colombian delegation accepted that stipulation solely because it believed that it was only fair to allow for the economic, and even humanitarian, reasons justifying the temporary recognition of the interests of fishing States, whose traditional practices should not be suddenly stopped. The best method to strengthen and consolidate the so-called historic rights for ever would be to fail to change the present situation by adopting intransigent attitudes rather than approve the proposed transitional system and accept the ten-year period in order to put an end to a situation which had arisen precisely because there had as yet been no international rule on the territorial sea and fishery limits.

21. Since the Colombian delegation would vote for the joint Canadian and United States proposal, it could not support the Argentine (A/CONF.19/C.1/L.11) or Guatemalan (A/CONF.19/C.1/L.12) amendments. Although the first Argentine amendment was unobjectionable in substance, it would annul the compromise provision; an uninterrupted period of thirty years could not be invoked by the nationals of any State, seeing that six years of war had interrupted the period 1930-1960. The phrase which the Guatemalan delegation wished to insert in article 3 of the joint proposal was implicit in the proposal itself, since fishing " in a lawful manner and without opposition from the coastal State " were the prerequisites for fishing continuously in any area of the sea.

22. The Colombian delegation would abstain from voting on the eighteen-Power proposal, since to vote for it would be incompatible with voting for the Canadian and United States proposal and to vote against it would be contrary to Colombian domestic law which would remain in force as long as Colombia did not sign and ratify an international convention modifying it.

23. With regard to recognition of special situations and preferential rights of coastal States, the Colombian delegation would accept the existence of special situations where a people's livelihood or economic development depended mainly on coastal fishing. To deny a country in such circumstances preferential rights would be to commit an injustice and thus to infringe the basic right of States to protect their existence as international legal entities. It could not, however, accept any proposal that left it to the State concerned to make a final unilateral determination of the exceptional conditions it was invoking and of the preferential rights which it was claiming to exercise, nor any proposal which lacked provisions for the peaceful settlement of disputes within a reasonable time. The Icelandic proposal (A/CONF.19/C.1/L.7/Rev.1), the Peruvian proposal (A/CONF.19/C.1/L.8) and the second Argentine amendment all contained elements, which, if combined, might have made up the appropriate formula, but none by itself entirely fulfilled the required conditions. The Colombian delegation would therefore abstain from voting on them.

24. None of the formulae in itself was ideal. Had it been so, the Conference would already have ended amid universal satisfaction. Colombia's lay between the two parties, and it had welcomed the formula which it considered the best compromise because it was seeking a constructive solution, not because it was set on any one proposal nor because it wished to defend the special interests of certain States.

25. Mr. QUIROGA (Spain) said that if the solution of the various problems raised by the régime of the high seas was to be effective and lasting, it would have to be based on the general principles expounded by the Spanish delegation at the 5th meeting of the Committee. His delegation would have preferred a regional solution of special problems, which would have permitted it to support the claims of some Latin American countries without advocating unrealistic and unnecessary formulae for seas which constituted a source of supply for the Spanish people. Unfortunately, that idea had not been embodied in a concrete proposal.

26. None of the proposals before the Committee solved the problem satisfactorily, and the Spanish delegation must simply select the proposal nearest to an appropriate solution; that was the proposal submitted by Canada and the United States (A/CONF.19/C.1/L.10).

27. It was unfortunate that the original United States proposal (A/CONF.19/C.1/L.3) had been withdrawn, since, combined with the provisions of the Convention on Fishing and the Conservation of the Living Resources of the Sea adopted in 1958, it might have offered a reasonable solution. Spain was interested in an orderly exploitation of the resources of the sea, which, unfortunately, were not inexhaustible. That fact justifiably perturbed coastal States, when fishing fleets from distant ports approached their coasts, but it equally perturbed the fishermen whose livelihood depended on the sea. The desire to reserve exclusively for the nationals of coastal States the right to fish in certain areas of the sea at present belonging to the high seas under positive law was, it might be thought, a primitive defensive reaction which was incompatible with modern developments in international institutions. The true solution should be sought rather by way of international co-operation in the protection and conservation of the living resources of the sea, not by preventing the exploitation of those resources when that could be done without prejudice to special or communal interests. It was in that spirit that the Spanish Council of Ministers had decided to accede to the 1958 Conventions and would shortly lay them before Parliament.

28. There would be no desire to appropriate the fisheries in a given area of the sea if the preservation of the resources of the sea were assured, if effective machinery were set up to prevent excessive fishing, and if that machinery were combined with a recognition of the preferential right of coastal States where restrictions might have to be placed on the volume of the catch. In some cases coastal States did not engage in intensive fishing, although they had the great advantage over other States whose ships had to sail hundreds of miles of being close to the fishing banks. In such cases, the final result of establishing exclusive fishing areas could only be to reduce the amount of food available for mankind, although the population of the coastal State or the international community would derive no benefit from it. Spanish fishing boats had for centuries fished for cod and whale off Newfoundland and for decades had fished off the coasts of Iceland, Ireland, France, Portugal and Morocco, the boats of those countries likewise fishing in the vicinity of the Spanish seas.

29. The Canadian and United States proposal was the furthest limit to which Spain could go. Of the 140,000 crew working in Spanish fishing boats (16,500 craft, excluding rowing boats) some 50,000 fishermen working in 3,350 boats would be affected by the new regulation making it impossible to fish between six and twelve miles outside territorial waters. It was estimated that the loss in wages would amount to 900 million pesetas ($15 million). It would obviously be difficult to retrain a large proportion of the fishermen if they were thrown out of work. The total Spanish catch, amounting to some 800,000 tons, was wholly consumed in the country, whose people needed the fish for food, as it provided the protein which other countries with a different eco-

nomic structure could obtain from stockbreeding and its products.

30. Although well aware of the sacrifice it was making, Spain would make a real effort at international collaboration and would therefore vote for the joint Canadian and United States proposal.

31. Mr. MULLHAUPT (Nicaragua) observed that it had been stated that the Conference had not been sufficiently well prepared and that the subject might not yet be ripe for complete solution. The Conference must dispel such apprehensions. The breadth of the territorial sea was subject, like all other aspects of international law, to continuous development and to the continuous play between right and force, the rule and the exception. At different periods different breadths had been accepted. What had now to be found was a rule representing a compromise solution. Such solutions could be achieved only by sacrifices on the part of all concerned. The territorial waters must be kept as narrow as possible in order to safeguard the interests of all nations. As between proposals for a twelve-mile limit and the proposals seeking a balance between the interests of the coastal States and the international community, the Nicaraguan delegation unhesitatingly supported the joint Canadian and United States proposal, which was clear and simple to apply: six miles of territorial sea and an additional six miles for fishery limits, without prejudice to existing bilateral or multilateral agreements and the possibility of concluding such agreements in the future. In the present state of the development of international law and, in particular, of the law of the sea, that proposal was undoubtedly the most satisfactory.

32. Mr. GARCIA SAYAN (Peru) wished to sum up his country's position before the various proposals were put to the vote. Peru's sovereignty over its seas was determined by the decree of 1947, and by the declaration and subsequent agreements concluded between the countries of the South Pacific. Peru could not consider any change in its position, which was based on those instruments, without compensatory measures to meet its rights and needs.

33. Its rights were the natural rights of a coastal State facing an immense ocean and defending, as part of its inheritance, the exceptional fishing resources of the sea adjacent to its coasts up to the limits justified by technical surveys. Its requirements were those of a country whose people had one of the lowest nutrition indices known, and at the same time a rate of growth that would double the population in twenty years. The fisheries made up for the aridity of the coast and the marked alimentary deficiencies which resulted therefrom. Peru had given extraordinary proof of its ability to derive advantage from its marine wealth; without trespassing on the seas of other countries, it had become one of the world's principal fishing countries. The people's diet was improving, and the fishing industry played today a part of first importance in the national economy. Peru did not exclude foreign fishermen who conformed to its regulations, which took into account the need for safeguarding the food supply of the birds which produced, in the form of guano, an essential fertilizer for Peruvian agriculture. But a large proportion of the catch brought in by Peruvian fishermen was made beyond the limits provided for in the proposals submitted to the Conference. If it accepted any of those formulae, Peru would be both robbing itself and exposing itself to all kinds of depredations by foreigners. That was why it had not accepted the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas, which tended to bring the coastal State down to the level of a junior partner in the exploitation of the living resources of its shores.

34. In order therefore that the Conference might achieve positive results based on justice and equity, Peru had submitted a draft resolution (A/CONF.19/C.1/L.8) [1] to be discussed and voted on by the plenary Conference. That proposal would give the coastal State, in exceptional cases, a preferential fishing right which would depend on the part played by fisheries in its economy and on the information obtained from geographical, biological and economic studies and surveys. Meanwhile Peru would vote against all proposals on the breadth of the territorial sea and the contiguous fishing zone which were incompatible with its accepted standards. It would vote for all or part of those proposals which favoured the recognition of exceptional situations or preferential rights. It would do so with the sole purpose of defending the principle of exceptions, which had already been accepted at the 1958 Conference, though by a resolution whose terms rendered the preferential right of the coastal State illusory.

35. Sir Kenneth BAILEY (Australia) said that his delegation would support the joint proposal by Canada and the United States (A/CONF.19/C.1/L.10) in all of its three aspects: the six-mile territorial sea, provided for in paragraph 1; the twelve-mile fishing zone provided for in paragraph 2; and the transitional arrangements provided for in paragraph 3. He paid a tribute to the spirit of compromise in which the joint proposal had been conceived and worked out. There was a tendency to be too abstract about States and their sacrifices; States were simply the juridical expression of peoples, and the rights expressed in the joint proposal were those of thousands of simple people in the countries represented at the Conference. It was a matter of extreme difficulty for Governments to put forward a proposal which represented a sacrifice by all those peoples, irrespective of whether they lived in coastal States or non-coastal States.

36. A six-mile territorial sea would undoubtedly restrict the three major rights of navigation, fishing and overflight, which made up the freedom of the seas and were enjoyed in common by nationals of all States. His delegation considered, however, that the curtailment of those three rights by a six-mile territorial sea could be accepted as a matter of practical adjustment. The representative of the Soviet Union had contended that no one at the Conference proposed to restrict the freedom of the seas. It was an incontrovertible fact that all the proposals before the Conference would have the effect of restricting it in some measure. Australia felt that a twelve-mile territorial sea would result in too drastic a curtailment of the areas in which the three major freedoms could be exercised without qualification. It was a plain matter

[1] Same text as document A/CONF.19/L.5.

of law that there was no general right of overflight corresponding to the right of innocent passage in the territorial sea itself.

37. His delegation could not accept the amendment submitted by Argentina (A/CONF.19/C.1/L.11) to paragraph 3 of the joint proposal by Canada and the United States. By definition, fishing in the outer six miles of the fishing zone had been as of legal right. The period of thirty years, which Argentina proposed to substitute for the five-year period during which States must have made a practice of such fishing, might have some relevance to accustomed periods of prescription. The question, however, was not one of prescription, but of whether States could be expected to surrender instantly rights which they had exercised under international law; it was the rights of people habitually and actively engaged in the fishing industry that were involved. It would be inequitable to insist on the uninterrupted exercise of fishing rights for thirty years before the Convention would provide for their continuance, since most fishing practices in most States had been drastically interrupted by wartime conditions, a situation for which the Argentina amendment made no provision.

38. The second Argentine amendment was also unacceptable. The rights of the coastal States in respect of fishing on the high seas beyond the contiguous zone had been carefully worked out in the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas, and questions so precisely settled in that Convention should not be re-opened. If the proposal had been that there should be further study of the difficult and controversial matters involved, the position of Australia would have been different, but it held the firm opinion that such matters could not be considered at the present Conference. The term " adjacent to its exclusive fishing zone " required clarification. The amendment proposed that all coastal States in all circumstances should have a preferential right of fishing, and Australia could not support such a wide breach in the 1958 Convention.

39. The representatives of Saudi Arabia and the Soviet Union had analysed the meaning of compromise. Their proposals meant that no State could be expected to change its position if, in theory or practice, it recognized a territorial sea of more than six miles. A compromise involved a change of position by all the States which were parties to it. The States which had sponsored and supported the joint Canadian and United States proposal had changed their positions in every respect. As a compromise, the Australian delegation supported it and invited the support of others.

40. Ato GOYTOM PETROS (Ethiopia) said that his country, one of the sponsors of the eighteen-Power proposal (A/CONF.19/C.1/L.2/Rev.1), would be unable to vote for the proposal submitted by Canada and the United States (A/CONF.19/C.1/L.10). That proposal was even less acceptable than the original Canadian proposal (A/CONF.19/C.1/L.4), which did not recognize historic rights, and seemed therefore not to deserve the praise which its authors had received for their conciliatory spirit. Though the joint proposal was a compromise, it was a compromise between two trends in the same body of opinion, and the supporters of the contrary opinion had no part in it.

41. It had been alleged that the supporters of the twelve-mile limit had not so far displayed any desire to reach a compromise and wished only to impose their will. The Ethiopian delegation had come to the Conference with a sincere desire for compromise, but it was difficult to make concessions when a country's right to extend its territorial sea up to a limit which did not violate any standard of accepted international law was denied. It had also been asked what benefit the coastal States would derive from an extensive territorial sea which they would find it difficult and costly to guard and exploit. The supporters of the twelve-mile limit might not possess the technical resources to exploit their marine wealth in the most rational way, but it was not by giving up those rights that they would be able to remedy a situation which some might consider inferior but which was only temporary.

42. Was it contrary to international law to possess a territorial sea whose extent, even though excessive in the view of some States, was in accordance with a legitimate right ? The answer was obviously in the negative. Was the fact that a twelve-mile territorial sea gave a coastal State thousands of square miles of sea a sufficient reason, in logic or law, why it should share that sea with other States ? Territorial sea had the same status as land territory, which a State could not yield. It would be neither valid in law nor morally just to ask States whose national territory was very extensive, but still unexploited and even unexplored, to surrender part of that territory to those who wanted more.

The meeting rose at 1.05 p.m.

TWENTY-EIGHTH MEETING

Wednesday, 13 April 1960, at 3.15 p.m.

Chairman: Mr. José A. CORREA (Ecuador)

Consideration of the questions of the breadth of the territorial sea and fishery limits in accordance with resolution 1307 (XIII) adopted by the General Assembly on 10 December 1958 *(continued)*

CONSIDERATION OF PROPOSALS (A/CONF.19/C.1/L.2/REV.1, L.7/REV.1, L.9 TO L.12) *(concluded)*

1. The CHAIRMAN said that the Committee would proceed to vote on the proposals and amendments before it. In accordance with rule 41 of the Conference's rules of procedure, they would be put to the vote in the following order: the eighteen-Power proposal (A/CONF.19/C.1/L.2/Rev.1); the Icelandic proposal (A/CONF.19/C.1/L.7/Rev.1); the Argentine amendments (A/CONF.19/C.1/L.11) to the joint Canadian and United States proposal; the Guatemalan amendment (A/CONF.19/C.1/L.12) to the same proposal; and finally, the joint Canadian and United States proposal (A/CONF.19/C.1/L.10).

2. Mr. DE PABLO PARDO (Argentina) announced that, in order to facilitate agreement in the Committee, his

delegation wished to withdraw its first amendment (A/CONF.19/C.1/L.11). It might, however, revert to the matter when the Conference met in plenary session.

3. The CHAIRMAN put the eighteen-Power proposal (A/CONF.19/C.1/L.2/Rev.1) to the vote.

The vote was taken by roll-call.

Yemen, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Yemen, Yugoslavia, Albania, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Czechoslovakia, Ecuador, Ethiopia, Ghana, Guinea, Hungary, Iceland, India, Indonesia, Iran, Iraq, Jordan, Lebanon, Libya, Federation of Malaya, Mexico, Morocco, Panama, Philippines, Poland, Romania, Saudi Arabia, Sudan, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Uruguay, Venezuela.

Against: Australia, Belgium, Brazil, Cameroons, Canada, China, Costa Rica, Denmark, Dominican Republic, El Salvador, France, Federal Republic of Germany, Greece, Haiti, Honduras, Ireland, Israel, Italy, Japan, Republic of Korea, Laos, Liberia, Luxembourg, Monaco, Netherlands, New Zealand, Nicaragua, Norway, Peru, Portugal, San Marino, Spain, Sweden, Switzerland, Thailand, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Republic of Viet-Nam.

Abstentions: Argentina, Austria, Bolivia, Ceylon, Chile, Colombia, Cuba, Finland, Guatemala, The Holy See, Pakistan, Paraguay, Turkey.

The eighteen-Power proposal was rejected by 39 votes to 36, with 13 abstentions.

4. The CHAIRMAN put the Icelandic proposal (A/CONF.19/C.1/L.7/Rev.1) to the vote.

The vote was taken by roll-call.

Poland, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Saudi Arabia, Sudan, Tunisia, United Arab Republic, Uruguay, Venezuela, Republic of Viet-Nam, Yemen, Yugoslavia, Argentina, Burma, Chile, Denmark, Ecuador, El Salvador, Ethiopia, Ghana, Guinea, Iceland, Indonesia, Iran, Iraq, Jordan, Republic of Korea, Lebanon, Libya, Mexico, Morocco, Panama, Peru, Philippines.

Against: Portugal, Spain, United Kingdom of Great Britain and Northern Ireland, Belgium, Cameroons, France, Greece, Italy, Japan, Netherlands, Norway.

Abstentions: Poland, Romania, San Marino, Sweden, Switzerland, Thailand, Turkey, Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republics, United States of America, Albania, Australia, Austria, Bolivia, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Canada, Ceylon, China, Colombia, Costa Rica, Cuba, Czechoslovakia, Dominican Republic, Finland, Federal Republic of Germany, Guatemala, Haiti, The Holy See, Honduras, Hungary, India, Ireland, Israel, Laos, Liberia, Luxembourg, Federation of Malaya, Monaco, New Zealand, Nicaragua, Pakistan, Paraguay.

The Icelandic proposal was adopted by 31 votes to 11, with 46 abstentions.

5. The CHAIRMAN put the second Argentine amendment (A/CONF.19/C.1/L.11) to the joint Canadian and United States proposal (A/CONF.19/C.1/L.10) to the vote.

The vote was taken by roll-call.

Israel, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Jordan, Lebanon, Libya, Mexico, Morocco, Peru, Philippines, Saudi Arabia, Sudan, Tunisia, United Arab Republic, Uruguay, Venezuela, Yemen, Yugoslavia, Argentina, Burma, Cambodia, Chile, Ecuador, El Salvador, Ethiopia, Guinea, Iceland, Indonesia, Iran, Iraq.

Against: Italy, Japan, Laos, Luxembourg, Monaco, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Portugal, San Marino, Spain, Sweden, Switzerland, Turkey, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Republic of Viet-Nam, Australia, Belgium, Cameroons, Canada, China, Denmark, Finland, France, Federal Republic of Germany, Greece, Haiti, Honduras, Ireland.

Abstentions: Israel, Republic of Korea, Liberia, Federation of Malaya, Panama, Paraguay, Poland, Romania, Thailand, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Albania, Austria, Bolivia, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Ceylon, Colombia, Costa Rica, Cuba, Czechoslovakia, Dominican Republic, Ghana, Guatemala, The Holy See, Hungary, India.

The Argentine amendment to the joint Canadian and United States proposal was rejected by 33 votes to 27, with 28 abstentions.

6. The CHAIRMAN put the Guatemalan amendment (A/CONF.19/C.1/L.12) to the joint Canadian and United States proposal (A/CONF.19/C.1/L.10) to the vote.

The vote was taken by roll-call.

Brazil, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Cambodia, Ecuador, Guatemala.

Against: Bulgaria, Byelorussian Soviet Socialist Republic, Cameroons, Canada, Ceylon, China, Colombia, Czechoslovakia, Denmark, France, Federal Republic of Germany, Greece, Hungary, Ireland, Israel, Italy, Japan, Laos, Liberia, Luxembourg, Monaco, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Peru, Poland, Portugal, Romania, San Marino, Spain, Sweden, Switzerland, Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Republic of Viet-Nam, Albania, Australia, Austria, Belgium.

Abstaining: Brazil, Burma, Chile, Costa Rica, Cuba, Dominican Republic, El Salvador, Ethiopia, Finland, Ghana, Guinea, Haiti, The Holy See, Honduras, Iceland, India, Indonesia, Iran, Iraq, Jordan, Republic of Korea, Lebanon, Libya, Federation of Malaya, Mexico, Morocco, Panama, Paraguay, Philippines, Saudi Arabia, Sudan, Thailand, Tunisia, Turkey, United Arab Republic, Uruguay, Venezuela, Yemen, Yugoslavia, Argentina, Bolivia.

The Guatemalan amendment to the joint Canadian and United States proposal was rejected by 44 votes to 3, with 41 abstentions.

7. The CHAIRMAN invited the Committee to vote on the joint Canadian and United States proposal (A/CONF.19/C.1/L.10).

8. Mr. CHACON PAZOS (Guatemala) moved that a separate vote be taken on paragraph 3 of the joint proposal.

9. Mr. DEAN (United States of America) said that that procedure would be unacceptable to the authors of the proposal, since it formed a carefully integrated whole.

10. The CHAIRMAN put the Guatemalan representative's motion to the vote in accordance with rule 39 of the rules of procedure.

The Guatemalan motion was rejected by 46 votes to 19, with 21 abstentions. The vote on the joint Canadian and United States proposal was taken by roll-call. Ethiopia, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Federal Republic of Germany, Greece, Haiti, Honduras, Ireland, Israel, Italy, Japan, Republic of Korea, Laos, Liberia, Luxembourg, Federation of Malaya, Monaco, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Paraguay, Portugal, San Marino, Spain, Switzerland, Thailand, Turkey, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Republic of Viet-Nam, Australia, Austria, Bolivia, Brazil, Cameroons, Canada, Ceylon, China, Colombia, Costa Rica, Denmark, Dominican Republic.

Against: Ethiopia, Guinea, Hungary, Iceland, Indonesia, Iran, Iraq, Jordan, Lebanon, Libya, Mexico, Morocco, Panama, Peru, Poland, Romania, Saudi Arabia, Sudan, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Venezuela, Yemen, Yugoslavia, Albania, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Chile, Czechoslovakia, Ecuador, El Salvador.

Abstaining: Finland, France, Ghana, Guatemala, The Holy See, India, Philippines, Sweden, Argentina, Belgium, Cambodia, Cuba.

The joint Canadian and United States proposal was adopted by 43 votes to 33, with 12 abstentions.

11. The CHAIRMAN, announcing that the Committee had finished voting on the proposals and amendments thereto, invited those representatives who wished to do so to explain their vote.

12. Mr. GROS (France) said that he had voted against the Icelandic proposal, not because his Government was opposed to the Conference's dealing with special situations, but only because it believed that a general rule must be established before exceptions could be formulated to it.

13. His delegation had been most appreciative of the effort made by the authors of the joint Canadian and United States proposal to achieve a compromise. Unfortunately, that compromise had been misunderstood and much criticized. His delegation had abstained from voting on the proposal because it did not wish an affirmative vote to be interpreted as acceptance by France of the principle of an exclusive fishing zone.

14. It had been claimed that the first United Nations Conference on the law of the sea had buried the three-mile rule, which France, together with other countries, still upheld, on the ground that those countries had declared themselves willing to compromise on a six-mile territorial sea. He felt therefore that a vote cast for the Canadian and United States proposal would be held to imply recognition of the legality of an exclusive fishing zone. But France had not abandoned the three-mile rule, nor would it accept the right to an exclusive fishing zone as a new rule of international law unless such a rule secured overwhelming or almost unanimous support at the present Conference. At the 25th meeting, the Yugoslav representative had pertinently argued that law was not created by votes, and that a rule of international law only owed its existence to the assent of States or to treaties duly signed and ratified.

15. He had been surprised, therefore, by the insistence that a twelve-mile limit must be recognized as a rule of international law. True, it had been adopted by one State at the beginning of the century, but others had introduced such a breadth only lately, sometimes only one or two years ago. In what strangely different ways the question was approached: no account was taken of the fact that French fishermen had been fishing in certain waters for three centuries, which could certainly be termed a " practice ", but recognition was sought for a " practice " of twelve miles which had only been in existence for two or three years. Indeed, certain States were apparently determined to maintain a limit they had adopted unilaterally and to ignore completely the interests and practice, however long-standing, of others.

16. That lack of understanding for the considerable effort made by the Canadian and United States delegations, together with those which had supported their original proposals, to arrive at a compromise had prompted him to point out to the Conference that France would not accept as a new rule of international law an exclusive fishing zone up to twelve miles broad unless the concessions made by the supporters of the joint proposal were matched by the countries in favour of a twelve-mile territorial sea. So far those countries had made no attempt to meet the States which were prepared to make substantial sacrifices where their fishing interests were concerned in order to try to reach an agreement.

17. He had already mentioned the scale of the sacrifices that would be imposed on French working people by the introduction of an exclusive twelve-mile fishing zone. It was utterly contrary to the spirit of the United Nations to expect delegations to attend a conference solely for the purpose of accepting a thesis propounded by those holding other views; and simply to argue that what was good for countries with a twelve-mile territorial sea must be good for the whole of mankind was not the way to create new rules of international law.

18. The Conference still had some time before it and another opportunity of voting, and he urged representatives to bear his remarks in mind, so that more might emerge from the deliberations of the Conference than

the acknowledgement of the simultaneous application of a six-mile limit by some States and of a twelve-mile limit by others.

19. Sir Claude COREA (Ceylon) said that at the first Conference in 1958 Ceylon had strongly supported the six-mile formula. His delegation had therefore been glad to see that formula supported by an increasing number of countries since then.

20. However, his delegation had misgivings about the proposed exclusive fishing zone, because the establishment of such a zone would wipe out certain rights which Ceylon had built up over the years, rights on which his country's economy to some extent depended. His delegation would therefore have gladly supported the original United States proposal (A/CONF.19/C.1/L.3) which would have given recognition to the vested rights of Ceylon, a small country, in distant-water fishing; it had accordingly been disappointed when the United States delegation had withdrawn that proposal in order to join Canada in submitting the joint proposal (A/CONF.19/C.1/L.10). His delegation had none the less voted for the latter because it retained at least a vestige of the recognition of those rights in the form of a ten-year period of grace, although Ceylon would naturally have preferred to see its accrued rights fully safeguarded. It was not a matter of asserting an imperialistic claim, but merely one of protecting the livelihood of the fishermen of a small peace-loving country.

21. Although Ceylon had consistently favoured, and continued to favour, a six-mile territorial sea, his delegation had abstained from voting on the eighteen-Power proposal (A/CONF.19/C.1/L.2/Rev.1). There was no inconsistency in its attitude, because his country did not wish to stand in the way of those who sought to establish a territorial sea twelve miles broad if they were able to rally sufficient support to ensure the adoption of their proposal.

22. The position reached by the Committee was not a happy one, from the point of view of the interests of international law. He urged the advocates of the two conflicting formulas to make further attempts to reach agreement during the Easter recess, to enable the Conference to approve a new rule of international law by more than the two-thirds majority required.

23. Mr. VAN DER ESSEN (Belgium) said that his country had only a very short coastline, but that coastline supported a large community of fishermen whose activities would be drastically curtailed if the joint proposal were adopted. The Belgian delegation would, however, have been prepared to accept the original United States proposal, although the extension of the territorial sea from three to six miles, combined with the system of straight baselines, would have subtracted large areas from the high seas and thereby shut Belgian fishermen out from those areas, and although the reservation regarding historic rights would have protected Belgian fishing activities in but very few sea areas.

24. Hence the Belgian delegation had been unable to vote for the joint proposal because it could not accept the complete sacrifice of the traditional activities of courageous fishermen who were strongly attached to their calling. His delegation had not, however, gone so far as to vote against the proposal, because it was the most moderate that had been put to the vote. But he wished to make it clear that his abstention should not be interpreted as an acceptance of the extension of the territorial sea to more than six miles.

25. Mr. SOHN (Republic of Korea) said that his delegation had voted for the joint proposal because it considered that the formula which sought to establish a territorial sea six miles broad was a reasonable one, and because it believed that there should be uniformity in the matter of the breadth of the territorial sea.

26. His delegation was not, however, satisfied with the fisheries provisions of the joint proposal, although it had still cast an affirmative vote in a spirit of co-operation. That vote should therefore not be construed as meaning that the Republic of Korea was in full agreement with the provisions relating to fishery problems, for, in his delegation's view, they would not settle those problems at all.

27. Moreover, his delegation's affirmative vote should not be construed as meaning that it accepted the inference that adoption of the joint proposal would preclude the future conclusion of an agreement or agreements between the States concerned on fishery problems which called for special treatment. In fact, the Republic of Korea had special fishing problems to settle with its neighbouring country in accordance with the provisions of the San Francisco Treaty of 1951.

28. Mr. MELO LECAROS (Chile) wished in particular to explain his delegation's vote on the joint proposal. As he had explained at the 14th meeting, his country's chief concern in matters relating to the sea was to enable its population to continue to benefit in a legitimate manner from a source of wealth to which it was naturally entitled. Chile's policy had been unswervingly directed to that end; and on it reposed the Chilean Presidential Declaration of June 1947 concerning Chilean territorial claims and the agreements entered into by Chile with Peru and Ecuador, the basic purpose of which was to ensure that appropriate measures were taken to conserve the living resources of the South Pacific Ocean.

29. Accordingly, in the spirit of co-operation which animated his Government's activities, and in order to make its contribution to the efforts to settle the problem of the breadth of the territorial sea, his delegation was disposed to favour a delimitation of six miles for the territorial sea and the establishment of an exclusive fishing zone extending twelve miles to seaward from the applicable baseline. His delegation therefore regretted that it had been obliged to vote against the joint proposal. The reason why it had done so was that it could not support the principle embodied in paragraph 3 of the proposal, a principle that was devoid of all legal foundation. The mere fact that an activity had been carried on for a period of no more than five years could not be accepted as grounds for the recognition of a right to continue that activity, even if it was to lapse after ten years. Besides, there should have been a logical counterpart to that provision: in all fairness, the existence of other special situations, to which reference had frequently been made during the discussions in the Committee, should have been recognized. Unfortunately, the joint proposal said nothing on the subject. The amendment proposed by Argentina (A/CONF.19/C.1/

L.11) had been intended to make good that lacuna; but it had been rejected. The draft resolutions of Cuba (A/CONF.19/C.1/L.9) and Peru (A/CONF.19/C.1/L.8), which were to be dealt with by the Conference in plenary session, were also intended to fill the gap.

30. In his delegation's opinion, the problem had not been approached realistically. A complete reappraisal of the situation was necessary if a generally acceptable solution was to be devised. Even a cursory review of the situation would show that a formula which sought to establish a territorial sea six miles broad with a contiguous fishing zone extending a further six miles to seaward would be acceptable to a very large number of the Governments represented at the Conference; but those Governments were, unhappily, divided on the question of the special rights concerning fisheries.

31. In that respect, it was clear that the Conference did not have the necessary information to enable it to deal with all the special situations in question, and that it was impossible to formulate a general practical rule covering them all. But their existence could not be denied, and they would therefore have to be recognized. In other words, the door must be left open for some other formula capable of meeting all those widely varying situations. Frank recognition of all those factors might well lead to an agreement capable of commanding substantial support.

32. Mr. MONACO (Italy) said that his delegation's vote for the joint proposal called for an explanation because at the 7th meeting in the general debate his delegation had maintained that the Conference, as a codification conference, ought to confine itself to a restatement of existing international law on the subject before it. He had then pointed out that the contiguous fisheries zone was unknown to general international law, and that the freedom to fish in sea areas adjacent to the territorial sea was a legitimate right which could not be disputed. His delegation had nevertheless voted for the joint proposal, despite the fact that, inasmuch as it made provision for a contiguous fishing zone and imposed a ten-year limit on the freedom to fish therein, it was conducive to the establishment of new rules of international law — rules which might be set up at the present Conference or elsewhere, but which did not constitute a codification of existing international law on the basis of the excellent preparatory work done by the International Law Commission.

33. The Italian delegation believed that the Conference should be primarily concerned with technical rather than economic or political problems, but it had been prepared to abandon its original position in the hope of facilitating an equitable solution and thereby ensuring the success of the Conference. He urged that further efforts be made before the end of the Conference, to bridge over the differences which had become apparent.

34. His delegation had voted against the Icelandic proposal, not because Italy wished to thwart the special interests which obtained in certain parts of the world, or to ignore the peculiar economic position of a small country, but because the terms of the proposal were unacceptable to his delegation for legal reasons; namely, the preferential rights of the coastal State in the matter of fishing in certain areas were related to the procedure laid down in the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas.

35. Mr. GARCIA ROBLES (Mexico) explained that his delegation had voted against the joint proposal for the reasons he had given at the 10th meeting. It had supported the Argentine amendment because it embodied a principle that was fair and in harmony with the legitimate aspirations of coastal States. Had it incorporated that principle, the joint proposal would have been more acceptable, although his delegation would still have voted against it.

36. He recalled that, when the question of convening a second conference on the law of the sea had been discussed in the Sixth Committee of the United Nations General Assembly,[1] he had asked what new formula had been evolved and what new favourable developments had occurred to justify the expectation that a second conference would prove successful. The almost identical results of the voting at the two conferences eloquently demonstrated that his misgivings had been well founded. Nevertheless, he hoped that some universal solution would be found before the end of the Conference.

37. Mr. HARE (United Kingdom) said that, while his delegation was not at all unsympathetic to the position of the few countries that the Icelandic proposal was designed to assist, it believed, as it had said earlier, that that proposal contained too many uncertain elements to achieve its purpose. It was similar in intention to others submitted to the Conference, inasmuch as it dealt with the question of the preferential fishing rights of coastal States, but he was not sure that the economic aspect of fishing on the high seas fell within the scope of the present Conference. The large number of abstentions on the Icelandic and Argentine proposals might be taken to reflect a general feeling that the problem required further study, which he thought might perhaps be undertaken by an appropriate specialized agency of the United Nations. That was a possibility that might be borne in mind when the matter came up in plenary session.

38. Mr. CHACON PAZOS (Guatemala) explained that, although his delegation had spoken favourably of the joint proposal, it had abstained from voting on it because article 3 was unacceptable to Guatemala, for the reasons he had given at the 26th meeting. He wished to make it clear that, whatever solution the Conference might adopt, his Government did not recognize the right of any country to fish within twelve miles of the coast of Guatemala.

39. Mr. BENEDIKTSSON (Iceland) did not agree with the United Kingdom representative that the large number of abstentions on the Icelandic proposal could be interpreted as reflecting a general view that the question of special circumstances should be studied by another agency. In his delegation's opinion, the inference to be drawn was that the question needed further study before the end of the present Conference; otherwise, delegations would have voted against the proposal.

[1] *Official Records of the General Assembly, Thirteenth Session, Sixth Committee*, 589th meeting.

Adoption of conventions or other instruments regarding the matters considered and of the Final Act of the Conference

40. The CHAIRMAN said that the Committee could not at that stage make recommendations to the Conference on the adoption of conventions or other instruments regarding the matters considered or on that of the Final Act of the Conference, and suggested that the matter be referred to the Conference without recommendations, as had been done at the first Conference in 1958.

It was so decided.

Completion of the Committee's work

41. The CHAIRMAN declared that the Committee had completed its work.

42. Mr. SEN (India) wished to express his sincere appreciation of the exemplary manner in which the Chairman had conducted the Committee's work, and believed that in doing so he was voicing the feeling of all delegations.

The meeting rose at 5 p.m.

ANNEXES

NOTE: For the pagination of these annexes, see entries in bold type in the *Index to documents of the Conference*, pp. x-xi of the present volume.

DOCUMENT A/CONF.19/4

Synoptical table concerning the breadth and juridical status of the territorial sea and adjacent zones

[*Original text: English*]
[*8 February 1960*]

1. During the first United Nations Conference on the Law of the Sea, the Secretariat prepared, at the request of the First Committee and in consultation with the delegations, a synoptical table concerning the breadth and juridical status of the territorial sea and adjacent zones of the States represented at the Conference.[1]

2. During the thirteenth session of the General Assembly, in connexion with the discussion in the Sixth Committee on item 59 of the agenda, namely, " Question of convening a second United Nations conference on the law of the sea ", the Secretariat, at the request of several delegations, made the synoptical table available to the Sixth Committee. Various delegations, in the course of that session, made known to the Secretariat their wish that the synoptical table should be brought up-to-date and then republished as a document for the second United Nations Conference on the Law of the Sea. Accordingly, by a note dated 13 March 1959, the Secretary-General informed all States invited to participate in the second Conference under paragraph 3 of General Assembly resolution 1307 (XIII) that the Secretariat was preparing a revised edition of the synoptical table for this purpose. He further requested that the States should transmit to him, by 1 November 1959, any data which it was desired should be included in order to amend or supplement the synoptical table, together with the relevant texts of the laws or regulations. The synoptical table was annexed to the note.

3. The present revised table, although based upon the original synoptical table prepared at the request of the First Committee during the first United Nations Conference on the Law of the Sea, incorporates all the changes that have been requested by the States concerned.

[1] See *Official Records of the United Nations Conference on the Law of the Sea*, vol. III, 14th meeting, paras. 1-29, and document A/CONF.13/C.1/L.11/Rev.1 and Corr.1 and 2.

4. Some observations in connexion with the table appear necessary. Where a figure in miles or metres is given, followed by a year in parentheses and then a page reference, the year is that of the relevant law, regulation or decree, and the page reference is to the volume in the *United Nations Legislative Series* entitled *Laws and Regulations on the Régime of the Territorial Sea.*[2] Where the page reference is preceded by the abbreviation *Suppl.*, this refers to the *Supplement*[3] to the volumes in the *United Nations Legislative Series* entitled *Laws and Regulations on the Régime of the High Seas*, volume I,[4] *Laws and Regulations on the Régime of the High Seas*, volume II,[5] and *Laws Concerning the Nationality of Ships.*[6] Where no page reference is given, this means that the figures are derived from information which was submitted by the States concerned either at the first United Nations Conference on the Law of the Sea, or in the Sixth Committee of the General Assembly at its thirteenth session, or in response to the Secretary-General's note of 13 March 1959.

5. The texts of laws and regulations which were received in reply to the said note are reproduced in a separate document (A/CONF.19/5 and Add.1-3). When necessary, reference is made to these texts in the footnotes appended to the synoptical table.

6. A blank entry opposite the name of a State in the revised synoptical table signifies that the relevant information was not available to the Secretariat.

[2] United Nations publication, Sales No.: 1957.V.2.

[3] United Nations publication, Sales No.: 59.V.2.

[4] United Nations publication, Sales No.: 1951.V.2.

[5] United Nations publication, Sales No.: 1952.V.1.

[6] United Nations publication, Sales No.: 1956.V.1.

State	Breadth of territorial sea	Continental shelf	Limits for special purposes						
			Customs	Security	Criminal jurisdiction	Civil jurisdiction	Fishing	Neutrality	Sanitary regulations
Albania	10 miles (1952)								
Argentina	3 miles (1869)	(1946) Including sovereignty over superjacent waters	12 miles (1869)	12 miles (1869)	5 miles (1889)	3 miles (1869)	10 miles (1907)	3 miles (1869)	12 miles (1869)
Australia	3 miles (1878)	(1953) Not affecting superjacent waters *Suppl.* p. 3 Pearl Fisheries Act (1952-53) *Suppl.* p. 4	3 miles (1901-1954) p. 63		3 miles (1878) pp. 319 355	3 miles (1912-1953) p. 63			
Belgium	3 miles (1929) p. 74		10 km. (1852)				3 miles (1891) p. 441	3 miles (1939) p. 615	
Brazil	3 miles (1950) p. 2	(1950) Not affecting navigation or fishing rights					12 miles (1938) p. 444	3 miles (1914) p. 2	
Bulgaria	12 miles (1951) p. 80								
Burma									
Cambodia	5 miles [a] (1957)	(1957) 50 metres. Including sovereignty over superjacent waters	12 miles (1957)	12 miles (1957)			12 miles (1957)		
Canada	3 miles		12 miles[b] (1952) p. 95		3 miles (1954) p. 322	3 miles (1934) p. 92	12 miles (1952) *Suppl.* p 22		
Ceylon	6 miles [c] (1957)	[d]	2 leagues from coast [e]	Territorial waters	[f]	[g]	[h]	Territorial waters	Territorial waters
Chile	50 km. (1941) *Suppl.* p. 23	(1947) 200 miles. Including sovereignty over superjacent waters, pp. 4-5	100 km. (1948)	100 km. (1941) *Suppl.* p. 23					
China	3 miles (1930) (Codification Conference)		12 miles (1934) p. 113						
Colombia	6 miles (1930)		20 km. (1931) p. 115				12 miles (1923) p. 5		12 miles (1923) Pollution of sea
Costa Rica	In accordance with international law [illegible]	(1949) [1] 200 miles incl. sovereignty over the superja-	[illegible]				200 miles (1939)		

									of sea
Denmark	3 miles		4 miles (1928) p. 121				3 miles (1951) p. 474		
Greenland							3 miles (1953) p. 476		
Faroe Islands							Special limit (1959) [j]		
Dominican Republic	3 miles (1952) p. 11		15 miles (1952) [k] p. 11				15 miles (1952) [k] p. 11		15 miles (1952) [k] p. 11
Ecuador	12 miles	To a depth of 200 metres (1950)					[l]		
El Salvador	200 miles (1950) p. 14	200 miles (1950) including sovereignty over superjacent waters, p. 14					200 miles (1955) p. 490		
Ethiopia	12 miles (1953) p. 129						12 miles (1953) p. 130		
Federation of Malaya	3 miles								
Finland	4 miles [m] (1956) p. 805		6 miles (1939) p. 14						
France	3 miles (1888) p. 497		20 km. (1948) p. 135	3-6 miles (1934)			3 miles (1888) p. 497	6 miles (1912)	
Germany, Federal Republic of	In accordance with international law (1956), p. 17		3 miles (1939) p. 139						
Greece	6 miles (1936)			10 miles (1913)				6 miles (1914)	
Guatemala	12 miles (1934)	(1956) Not affecting free maritime and air navigation	12 miles (1934/39) p. 141					12 miles (1940) p. 379	
Honduras	(1957) *Suppl.* p. 10 [n]	(1957) 200 metres or to where depth admits of exploitation. Sea-bed and subsoil only. *Suppl.* p. 10	6 miles (1925) p. 146				[n]		
Iceland		(1948) Relates to fisheries only. p. 513	4 miles (1935) p. 146				12 miles [o] (1958) *Suppl.* p. 11		

State	Breadth of territorial sea	Continental shelf	Limits for special purposes: Customs	Security	Criminal jurisdiction	Civil jurisdiction	Fishing	Neutrality	Sanitary regulations
India	6 miles (1956) p. 23	(1955). Sea-bed and subsoil only. *Suppl.* pp. 13-14	12 miles (1956) [p]				100 miles (1956) [q]		12 miles (1956) [p]
Indonesia	12 miles (1957) [r]								
Iran	12 miles (1959) [s]	(1955). Sea-bed and subsoil only. p. 25							
Iraq	In accordance with international law (1956), p. 26								
Ireland	3 miles (1959) [t]						[t]		
Israel	6 miles (1956) p. 26	(1952). Not affecting superjacent waters. *Suppl.* p. 14.			6 miles (1955) pp. 26, 340-2		6 miles (1937) pp. 26, 518		
Italy	6 miles (1942) p. 162		12 miles (1940) p. 172	10 miles (1912; in time of peace)			6 miles (1942) pp. 162, 165		
Japan	3 miles (1870)							3 miles (1870) p. 29	
Jordan	3 miles (1943) p. 522						3 miles (1943) p. 522		
Korea, Republic of		(1952). Including sovereignty over superjacent waters.[u] p. 30					20-200 miles (1952-1954) pp. 30, 523		
Lebanon			20 km. (1954) p. 177		20 km. (1943) p. 344		6 miles (1921) p. 524		
Liberia	3 miles (for all purposes)								
Libya	12 miles (1954)								
Mexico	9 miles [v] (1935-1941)	(1945). Not affecting right of free navigation.[w]					See under continental shelf		
Monaco	According to in-		20 km.						

Netherlands	3 miles (1889) p. 531						3 miles (1952) p. 533	3 miles (1939) p. 647	
New Zealand	In accordance with international law		In accordance with international law (1913)		In accordance with international law (1953) p. 346		3 miles (1908) p. 540 (1935) (1934) p. 597		3 miles (1956)
Nicaragua		(1950). Including sovereignty over the superjacent waters, p. 35							
Norway	4 miles [x] (1812)		10 miles (1932) p. 35				4 miles (1906) p. 549	4 miles [y]	
Pakistan	3 miles (1878) p. 38 [z]	Sea-bed along the coast extending to 100 fathom contour into the open sea (1950), p. 38			3 miles (1878) p. 38 [z]		Sea within a distance of 1 marine league of seacoast (1897) p. 38		
Panama	12 miles (1958) [aa]	(1946). Including sovereignty over the superjacent waters [bb]					(1946) Extends over area of sea above continental shelf [cc]		
Peru		(1947). 200 miles including sovereignty over the superjacent waters, p. 38					(1947) 200 miles p. 38		
Philippines [dd]									
Poland	3 miles (1932) p. 40		6 miles (1933) p. 40	6 miles (1932)					
Portugal		(1956) 200 metres. Seabed and subsoil only, not affecting superjacent waters. *Suppl.* p. 16	6 miles (1885) p. 811				Reciprocity (1917) p. 810		6 miles (1928) Pollution by oil
Romania	12 miles (1951) [ee] p. 238								

State	Breadth of territorial sea	Continental shelf	Limits for special purposes						
			Customs	*Security*	*Criminal jurisdiction*	*Civil jurisdiction*	*Fishing*	*Neutrality*	*Sanitary regulations*
Saudi Arabia	12 miles (1958) *Suppl.* p. 29		18 miles (1958) *Suppl.* p. 29	18 miles (1958) *Suppl.* p. 29					18 miles (1958) *Suppl.* p. 29
Spain	6 miles (1957) *Suppl.* p. 30		6 miles (1948) *Suppl.* p. 30				6 miles (1909/1933) *Suppl.* p. 30		
Sweden	4 miles (since 1779) p. 655, footnote 2		4 miles (1927) p. 246					4 miles (1938) p. 655	
Thailand	6 miles (1958)						12 miles (1958)		
Tunisia	3 miles (1951)						50 metres of depth of water (1951)		
Turkey									
Union of South Africa	3 miles (1935) p. 42		3 miles (1955) p. 254				3 miles (1955) p. 571		3 miles (1919) p. 253
Union of Soviet Socialist Republics	12 miles (1909) [ff]								
United Arab Republic	12 miles (1958)								
United Kingdom	3 miles [gg] (1878) p. 355		3 miles (1952) p. 288		3 miles (1878) p. 355		3 miles (1933) p. 596		
Arab States under protection		(1949) Seabed and subsoil only. Not affecting superjacent waters [hh]							
Bahamas B. Guiana B. Honduras Brunei		(1948) Ditto, " [ii] (1954) Ditto, p. 48 (1950) Ditto, p. 48 (1954) Ditto, p. 48							
Falkland Isles [jj] Jamaica North Borneo Sarawak		(1950) Ditto, p. 49 (1948) Ditto, p. 48 (1954) Ditto, p. 48 (1954) Ditto, p. 48							
United States of America	3 miles (1953) p. 54	(1945). Seabed and subsoil only. Not affecting superjacent waters [kk]	12 miles (1930) [illegible]						3 miles (1924)

	[illegible] (Codification Conference)								
Venezuela	12 miles (1956) [mm] [nn]	(1956). Seabed and subsoil only. 200 metres or beyond that when depth of superjacent waters admits of exploitation of resources [mm]	15 miles (1956) [mm]	15 miles (1956) [mm]			(1956) Right to establish non-exclusive conservation zones [mm]		15 miles (1956) [mm]
Viet-Nam, Republic of							20 km. (1936)		
Yemen									
Yugoslavia	6 miles (1948) p. 314		6 miles (1949) p. 317				10 miles (1950) [oo] p. 613		

[a] Measured from straight baselines.

[b] Nine marine miles beyond Canadian waters.

[c] Measured from the appropriate baseline. See Proclamation of the Governor-General, 20 December 1957 (A/CONF.19/5, under Ceylon).

[d] Exclusive sovereign rights over the sea-bed and subsoil of the continental or insular shelf adjoining the territory and beyond the territorial waters of Ceylon. The right to establish conservation zones in that part of the Indian Ocean known as the Wadge Bank and in such areas of the high seas adjacent to the territorial waters of Ceylon as are within a distance of 100 nautical miles from the outer limits of those waters. See Proclamation of the Governor-General, 20 December 1957 (A/CONF.19/5, under Ceylon).

[e] Section 65 of the Customs Ordinance of 1870, as amended (*Laws and Regulations on the Régime of the Territorial Sea*, p. 104). These provisions had been made prior to the Proclamation of 20 December 1957 extending the limits of the territorial waters (A/CONF.19/5, under Ceylon).

[f] Generally within territorial limits—i.e., up to the limits of the territorial waters. Extraterritorial jurisdiction exists in the following cases: (*a*) In regard to offences under the Pearl Fisheries Ordinance where the Ceylonese courts have jurisdiction in regard to offences committed over the pearl banks delineated in the plan set out in the first schedule to the said Ordinance (*Laws and Regulations on the Régime of the Territorial Sea*, p. 459); (*b*) In regard to offences under the Chanks Ordinance where the Ceylonese courts have jurisdiction in regard to offences committed in and over the limits set out in schedule B to the said ordinance (*Ibid.*, p. 456); (*c*) The Ceylonese courts have jurisdiction in respect of certain offences like treason, robbery, murder, conspiracy committed on the high seas falling within Admiralty jurisdiction (section 136 of the Criminal Procedure Code) (*Ibid.*, p. 328); (*d*) Customs.

[g] Territorial limits. But the Supreme Court has jurisdiction as extensive as the Admiralty jurisdiction of the High Court of England under the Ceylon Courts of Admiralty Ordinance (*Ibid.*).

[h] (*a*) Territorial Waters. Section 27 of the Fisheries Ordinance No. 24 of 1940, as amended (*Ibid.*, p. 454); (*b*) In regard to pearl fisheries, the Ceylon pearl banks as delineated in the plan set out in the first schedule to the Pearl Fisheries Ordinance (*Ibid.*, p. 459); (*c*) In regard to the collection of Chanks bêche-de-mer, coral and shells, the limits set out in schedule B to the Chanks Ordinance, amended by Act No. 12 of 1948 and Chank Fisheries Act No. 8 of 1953 (*Ibid.*, p. 456); (*d*) Whaling Ordinance No. 2 of 1936 (*Ibid.*, p. 458); (*e*) Proclamation by the Governor-General of 20 December 1957 declaring rights to establish conservation zones to regulate fishing in the Wadge Bank and in the seas within 100 miles (A/CONF.19/5, under Ceylon).

[i] *Laws and Regulations on the Régime of the High Seas*, vol. I, p. 9.

[j] See Order No. 130 of 27 April 1950 (A/CONF.19/5, under Denmark).

[k] Twelve nautical miles measured from the outer limit of the territorial sea.

[l] "The Government of Ecuador has proclaimed its paramount right to priority over all others in the exploitation of the resources of the sea near its coasts, as well as its special right, inherent in its geographical position, to conserve and protect the living resources of the sea."

[m] Measured from straight baselines drawn between points not more than 8 miles apart.

[n] The Decree of 19 December 1957, article 6, does not specify any limit, but reserves the right to determine such limits in the future.

[o] Measured from straight baselines drawn between defined points.

[p] See Presidential Proclamation of 3 December 1956 (A/CONF. 19/5, under India (*b*)).

[q] The Proclamation of 29 November 1956 gives the Government power to establish conservation zones within a distance of 100 nautical miles from the outer limits of territorial waters (A/CONF.19/5, under India (*a*)).

[r] Measured from straight baselines drawn between the outermost points of the outermost islands or parts of islands comprising the Indonesian Archipelago.

[s] See Act of 12 April 1959 (A/CONF.19/5, under Iran).

[t] See Maritime Jurisdiction Act, 1959, and Maritime Jurisdiction Act, 1959 (Straight Baselines) Order, 1959 (A/CONF.19/5, under Ireland).

[u] The Presidential Proclamation of 18 January 1952 provides that the "declaration of sovereignty over the adjacent seas does not interfere with the rights of free navigation on the high seas".

[v] See *Laws and Regulations on the Régime of the Territorial Sea*, addendum (ST/LEG/SER.B/6/Add.1).

[w] *Laws and Regulations on the Régime of the High Seas*, vol. I, p.13.

[x] See Royal Decree of 22 February 1812 (A/CONF.19/5, under Norway). For the system of measurement see Anglo-Norwegian Fisheries Case, *I.C.J. Reports (1951)*, p. 116.

[y] During the two world wars, for practical reasons, 3 miles.

[z] Under the Territorial Waters Jurisdiction Act, 1878, s.7. This is an Act of Parliament of the United Kingdom in force in Pakistan. For text see *Laws and Regulations on the Régime of the Territorial Sea*, p. 355.

[aa] See Act No. 58 of 18 December 1958 (A/CONF.19/5, under Panama).

[bb] *Laws and Regulations on the Régime of the High Seas*, vol. I, p. 15.

[cc] *Ibid.*, p. 16.

[dd] The position of the Philippines is given in *Yearbook of the International Law Commission, 1956*, vol. II (United Nations publication, Sales No.: 1956.V.3, vol. II), pp. 69-70.

[ee] The Romanian People's Republic established the breadth of its territorial sea at 12 miles by Decree No. 176 of September 29 1951. This breadth was maintained in Decree No. 39 of 28 January 1956, published in *Laws and Regulations on the Régime of the Territorial Sea*, p. 238.

[ff] Law on the Extension of the Maritime Customs Zone, 10 December 1909 (see A/CONF.19/5, under USSR).

[gg] The legislation of the United Kingdom assumes, rather than specifically states, that the breadth is, in accordance with that State's view of international law, fixed at 3 miles.

[hh] *Laws and Regulations on the Régime of the High Seas*, vol. I, pp. 23-29.

[ii] *Ibid.*, p. 31.

[jj] By letter dated 22 December 1959, the Permanent Mission of Argentina to the United Nations expressed the formal reservations of the Argentine Government with regard to the reference herein to the Falkland Isles as belonging to the United Kingdom. Referring to the islands in question as the "Malvinas Islands", the Argentine Government reaffirmed its claim to sovereignty over them.

[kk] By accompanying press release stated to be limited to the 100 fathom line (*Department of State Bulletin*, vol. 12 (1945), p. 484).

[ll] *Laws and Regulations on the Régime of the High Seas*, vol. I, p. 130.

[mm] See Act of 27 July 1956 concerning the territorial sea, continental shelf, fishery protection and air-space (A/CONF.19/5, under Venezuela).

[nn] The territorial sea is measured from straight baselines to be specified by decree, with due respect for existing treaties.

[oo] Four nautical miles measured from the outer edge of the territorial waters.

DOCUMENT A/CONF.19/C.1/L.1

Union of Soviet Socialist Republics: proposal

[*Original text: Russian*]
[*21 March 1960*]

Every State is entitled to fix the breadth of its territorial sea up to a limit of twelve nautical miles. If the breadth of its territorial sea is less than this limit, a State may establish a fishing zone contiguous to its territorial sea provided, however, that the total breadth of the territorial sea and the fishing zone does not exceed twelve nautical miles. In this zone a State shall have the same rights of fishing and of exploitation of the living resources of the sea at it has in its territorial sea.

DOCUMENT A/CONF.19/C.1/L.2

Mexico: proposal

[*Original text: Spanish*]
[*21 March 1960*]

Article 1

1. Every State is entitled to fix the breadth of its territorial sea up to a limit of twelve miles measured from the baseline which may be applicable in conformity with articles 3 and 4 of the Convention on the Territorial Sea and the Contiguous Zone adopted by the first United Nations Conference on the Law of the Sea.

2. When the breadth of its territorial sea is less than twelve miles measured as above, a State has a fishing zone contiguous to its territorial sea in which it has the same rights in respect of fishing and the exploitation of the living resources of the sea as it has in its territorial sea. This fishing zone shall be measured from the baseline from which the breadth of the territorial sea is measured and will extend to the following limits:

(*a*) When the breadth of the territorial sea is from three to six miles, up to a limit of eighteen miles;

(*b*) When the breadth of the territorial sea is from seven to nine miles, up to a limit of fifteen miles;

(*c*) When the breadth of the territorial sea is from ten to eleven miles, up to a limit of twelve miles.

3. For the purpose of the present Convention (or Protocol) the term " mile " means a nautical mile, equivalent to 1,852 metres.

Article 2

1. The coastal State shall inform the Secretary-General of the United Nations, within six months of its depositing its instrument of ratification of the present Convention (or Protocol), of the breadth it has fixed for its territorial sea in pursuance of paragraph 1 of article 1 above, which breadth shall automatically determine the breadth of the fishing zone referred to in paragraph 2 of the said article 1, in accordance with sub-paragraphs (*a*), (*b*) and (*c*) of the said paragraph 2.

2. The coastal State undertakes not to change the breadth fixed for its territorial sea before the expiration of a period of five years from the date on which the present Convention (or Protocol) shall enter into force.

Article 3

1. Every State shall enact the necessary laws and regulations to prevent its nationals from fishing within the territorial seas and fishing zones of other States unless authorized to do so by the competent authorities of the coastal States concerned, and shall also adopt the necessary control measures to ensure observance by its nationals of such laws and regulations.

2. States shall communicate to the Secretary-General of the United Nations the texts of the laws and regulations referred to in the preceding paragraph, and shall also inform him as to the control measures adopted in accordance with that paragraph.

Article 4

1. After the expiration of a period of five years from the date on which the present Convention (or Protocol) shall enter into force, a request for the revision of the present Convention (or Protocol) may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such request.

Article 5

The Secretary-General of the United Nations shall apprise all States Members of the United Nations and all other States Parties to the present Convention (or Protocol) of:

(*a*) Signatures to the present Convention (or Protocol) and of the deposit of instruments of ratification or accession, in accordance with articles . . . ;

b) The breadth fixed by each of these States for its territorial sea;

(*c*) The information which he is to receive from States under article 3;

(*d*) Requests for revision in accordance with article 4.

COMMENTARY

1. A State which fixes the breadth of its territorial sea within the limit of twelve nautical miles is merely exercising a right it can legitimately claim under modern international law, since:

(*a*) This breadth is based on what may be called the " customary rule of international law ", which is the only existing rule on the subject, since, as is known, the breadth

of the territorial sea has never been fixed in a contractual international instrument of a general character, whether a treaty or a convention.

(*b*) The International Law Commission implicitly recognized that any breadth of the territorial sea which does not exceed twelve miles is valid in international law, since no other positive interpretation can be given to the negative proposition in article 3, paragraph 2, of the draft articles approved by the Commission and transmitted to the first United Nations Conference on the Law of the Sea. According to that paragraph " The Commission considers that international law does not permit an extension of the territorial sea beyond twelve miles ".[7]

2. The flexible formula with a twelve-mile limit, besides faithfully reflecting the practice of the vast majority of coastal States, is a very reasonable formula, which not only satisfies the legitimate aspirations and claims of the coastal States, but also does so without detriment to the freedom of maritime or aerial navigation. The former, indeed, has already been fully guaranteed in the provisions on innocent passage incorporated in the Convention on the Territorial Sea and the Contiguous Zone adopted in 1958, while the latter is suitably regulated by the Convention on International Civil Aviation, signed at Chicago in 1944.

3. It must be admitted, however, that despite the safeguards embodied in those Conventions, several maritime Powers still seem to believe that, if all coastal States fixed the breadth of their territorial sea at twelve miles, this would prejudice the two freedoms of navigation referred to, and they adduce this opinion as an argument against such a breadth. The Powers in question also maintain that to adopt the flexible formula of three to twelve miles would in fact mean fixing a breadth of twelve miles for the territorial sea, since, if this formula were adopted, all States which have a narrower territorial sea would hasten to extend it to the permitted twelve-mile limit.

4. Even though any objective examination of the true situation from both the legal and the practical point of view would seem to show that these fears are groundless, it has been thought advisable to see whether it may be possible to put into practice a procedure which may help dispel them. This procedure would be bound to take as its starting point the fact that a coastal State, as has been stated in paragraph 1, is already entitled under international law to fix the breadth of its territorial sea at up to twelve miles. Therefore, if some States consider that it suits their interests that as many coastal States as possible should refrain from exercising this right, the latter States must needs be given some compensation, such as that laid down in article 1, paragraph 2, of this proposal. It must be borne in mind that in relations between States, as in relations between persons, no one can be expected, much less compelled, to abstain from exercising legitimate rights without receiving adequate compensation.

5. The purpose of article 2 of the proposal is also to meet the wishes expressed by various maritime Powers that there should be the greatest possible degree of stability in matters relating to the breadth of the territorial sea.

6. The contents of article 3 of the proposal are based on the necessity, if it is desired — in accordance with resolution 1307 (XIII) of the United Nations General Assembly, by which it was decided to convene a second conference on the law of the sea — to contribute to " the lessening of international tensions and to the preservation of world order and peace ", for all Governments and especially the Governments of those countries with large fishing fleets to prohibit their nationals from fishing in the territorial sea and the exclusive fishing zone of other States unless they are duly authorized to do so in each case, and, in addition, to take the necessary supervisory and control measures to ensure strict compliance with this prohibition. It must be borne in mind in this connexion that one of the main causes of international friction with regard to fishing has been, and still is, the invasion of the territorial waters of many coastal States by fleets of foreign vessels engaged in fishing in such waters in breach of the laws and regulations enacted and published by those States.

7. The text of article 4 is identical with that of article 30 of the Convention on the Territorial Sea and the Contiguous Zone adopted at the first Conference, and has been included for the same reasons.

8. Lastly, article 5 is designed to ensure that States are duly informed of the breadth which each State has fixed for its territorial sea, of the action taken in compliance with article 3 of this proposal, and of any requests for revision which may be made in accordance with article 4.

[7] *Official Records of the General Assembly, Eleventh Session, Supplement No. 9*, p. 4.

DOCUMENT A/CONF.19/C.1/L.2/Rev.1

Ethiopia, Ghana, Guinea, Indonesia, Iran, Iraq, Jordan, Lebanon, Libya, Mexico, Morocco, Philippines, Saudi Arabia, Sudan, Tunisia, United Arab Republic, Venezuela and Yemen: proposal

[*Original text: English and Spanish*]
[*11 April 1960*]

Article 1

Every State is entitled to fix the breadth of its territorial sea up to a limit of twelve nautical miles measured from the applicable baseline.

Article 2

When the breadth of its territorial sea is less than twelve nautical miles measured as above, a State is entitled to establish a fishing zone contiguous to its territorial sea in which it has the same rights in respect of fishing and the exploitation of the living resources of the sea as it has in its territorial sea. This fishing zone shall be measured from the applicable baseline from which the breadth of the territorial sea is measured and may extend to a limit of twelve nautical miles.

Article 3

A State, if it has fixed the breadth of its territorial sea or contiguous fishing zone at less than twelve nautical miles, is entitled vis-à-vis any other State with a wider delimitation

thereof, to exercise the same sovereignty or the rights stated in article 2 above up to a limit equal to the limits fixed by that other State.

Article 4

Every State shall enact the necessary laws and regulations to prevent its nationals from fishing within the territorial seas and fishing zones of other States unless authorized to do so by the competent authorities of the coastal States concerned.

Article 5

Nothing in the provisions of this convention shall be construed so as to preclude the conclusion, subject to the established rules of international law, of bilateral or multilateral agreements of a regional character to regulate all matters of fishing amongst States with common interests.

Article 6

The foregoing provisions shall not affect in any manner the juridical status of historic waters.

DOCUMENT A/CONF.19/C.1/L.3

United States of America: proposal

[*Original text: English*]

[*23 March 1960*]

Article 1

The maximum breadth of the territorial sea of any state shall be six miles. For the purpose of the present Convention the term mile means a sea mile (1,852 metres) reckoned at sixty to one degree of latitude.

Article 2

The coastal state shall have exclusive fishing rights in a zone (hereinafter referred to as " the outer zone ") extending from the outer limit of its territorial sea to maximum distance of twelve miles measured from the baseline from which the breadth of its territorial sea is measured, subject however to the provisions of the present Convention.

Article 3

Any state whose vessels have made a practice of fishing in the outer zone of another state during the period of five years immediately preceding 1 January 1958 (hereinafter referred to as " the base period ") may continue to fish within the outer six miles of that zone for the same groups of species as were taken therein during the base period to an extent not exceeding in any year the annual average level of fishing carried on it the outer zone during the said period.

Article 4

Any state whose vessels are entitled, under the provisions of the present Convention, to fish in the outer zone of another state shall take such measures as are necessary to ensure that its vessels comply with the said provisions. Such measures shall be notified to the coastal state.

Article 5

The provisions of the annex to the present Convention shall apply to negotiations between the coastal state and the fishing state in regard to the application of the present Convention, and to the settlement of any dispute between such states arising out of the interpretation or application of the present Convention.

Annex

I. If the coastal State disputes that the vessels of the fishing State have made a practice of fishing in the outer six-mile zone during the base period, the former State may initiate the procedure provided for in section IV of this annex. Pending a decision under that procedure, vessels of the fishing State may continue to fish within the outer zone to the same extent as heretofore.

II. (*1*) Negotiations shall be entered into between the coastal State and the fishing State, if at any time either State so requests, for the purpose of agreeing upon the groups of species taken and upon the annual average level of fishing carried on by the vessels of the fishing State during the base period.

(*2*) If the negotiations referred to in paragraph (1) above do not result in agreement within twelve months from the time of any such request, either State may initiate the procedure provided for in section IV of this annex.

(*3*) The coastal State and the fishing State may enter into such arrangements as may be appropriate in particular cases for applying the provisions of article 3 of the Convention of .... , 1960.

III. (*1*) If the coastal State at any time so requests, negotiations shall be entered into between the coastal State and the fishing State for the purpose of reaching agreement upon any measures additional to those provided in article 4 of the Convention of ...., 1960, which may be necessary to ensure compliance with the provisions of that Convention.

(*2*) If the negotiations provided for in paragraph (*1*) above do not result in agreement within twelve months from the time of any such request, the coastal State may initiate the procedure provided for in section IV of this annex.

IV. (*1*) In the circumstances envisaged in sections I, II and III of this annex, the dispute shall be submitted for settlement to a commission of five members, unless the two states agree to seek a solution by another method of peaceful settlement.

(*2*) The members of the commission, one of whom shall be designated as chairman, shall be named by agreement between the States in dispute within three months of the request for settlement. Failing agreement they shall, upon the request of either State, be named by the Secretary-General of the United Nations, within a further three-month period, in consultation with the States in dispute and with the President of the International Court of Justice and, if the Secretary-General of the United Nations deems it appropriate, the Director-General of the Food and Agriculture Organization of the United Nations, from amongst well-qualified persons being nationals of States not involved in the dispute and specializing in legal, administrative or scientific questions relating to fisheries, depending upon the nature of the dispute to be settled. Any vacancy arising after the original appointment shall be filled in the same manner as provided for in the initial selection.

(*3*) Either state shall have the right to name one of its nationals to the commission, with the right to participate fully in the proceedings on the same footing as a member of the commission but without the right to vote or to take part in the writing of the commission's decision.

(*4*) The commission shall determine its own procedure, assuring each party to the proceedings a full opportunity to be heard and to present its case. It shall also determine how the costs and expenses shall be divided between the States in the dispute, failing agreement by those States on this matter.

(*5*) The commission shall render its decision within a period of

five months from the time it is appointed, unless it decides, in case of necessity, to extend the time limit for a period not exceeding three months.

(6) The commission shall, in, reaching its decision, adhere to any special agreements between the States in dispute regarding settlement of the dispute.

(7) Decisions of the commission shall be by majority vote, and shall be binding on the States in dispute.

DOCUMENT A/CONF.19/C.1/L.4

Canada: proposal

[*Original text: English*]

[*24 March 1960*]

1. A State is entitled to fix the breadth of its territorial sea up to a maximum of six nautical miles measured from the applicable baseline.

2. A State is entitled to establish a fishing zone contiguous to its territorial sea extending to a maximum limit of twelve nautical miles from the baseline from which the breadth of its territorial sea is measured, in which it shall have the same rights in respect of fishing and the exploitation of the living resources of the sea as it has in its territorial sea.

DOCUMENT A/CONF.19/C.1/L.5

Philippines: amendments to documents A/CONF.19/C.1/L.1 to L.4

[*Original text: English*]

[*1 April 1960*]

To each of the proposals contained in documents A/CONF. 19/C.1/L.1 to L.4 add the following as a last paragraph or article:

"The foregoing provisions shall not apply to historic waters."

COMMENTARY

1. This additional provision, to be appended to any rule which may be adopted on the breadth of the territorial sea, will merely state in positive terms what is already recognized and implied in the resolution on the régime of historic waters, adopted by 77 votes to none, with 3 abstentions, at the 20th plenary meeting, 27 April 1958, of the first United Nations Conference on the Law of the Sea.[8]

2. Pursuant to this resolution, the United Nations General Assembly has referred the study of the juridical régime of historic waters to the International Law Commission.[9]

3. The clear implication from the resolution is that historic waters, including bays, are recognized and have been set apart as having a special juridical status, and cannot be covered by any general rule which may be adopted as to the breadth of the territorial sea. In the case of bays, article 7, paragraph 6, of the Convention on the Territorial Sea and the Contiguous Zone, stipulates that: "The foregoing provisions shall not apply to so-called 'historic bays'...."

4. In order to complete the positive expression of the assumption and intent embodied in the above-quoted resolution, an identical provision on historic waters in general is called for. Hence, the proposed amendment.

[8] *Official Records of the United Nations Conference on the Law of the Sea,* vol. II, annexes, document A/CONF.13/L.56, resolution VII.

[9] *Official Records of the General Assembly, Fourteenth Session, Supplement No. 16,* resolution 1453 (XIV).

DOCUMENT A/CONF.19/C.1/L.6

Ethiopia, Ghana, Guinea, Indonesia, Iran, Iraq, Jordan, Lebanon, Libya, Morocco, Philippines, Saudi Arabia, Sudan, Tunisia, United Arab Republic and Yemen: proposal

[*Original text: English*]

[*6 April 1960*]

Article 1

A State has the right to fix the breadth of its territorial sea up to a maximum of twelve miles measured from the applicable baseline.

Article 2

A State, if the breadth of its territorial sea is less than twelve miles, has the right to establish a fishing zone contiguous to its territorial sea extending to a maximum of twelve miles measured from the applicable baseline.

Article 3

A State has in this fishing zone the same rights of fishing and of exploitation of the living resources of the sea as it has in its territorial sea.

Article 4

A State, if it has fixed the breadth of its territorial or contiguous fishing zone at less than twelve miles, has the right, vis-à-vis any other State with a different delimitation thereof, to exercise the same sovereignty or exclusive fishing rights beyond its fixed limits up to the limits fixed by that other State.

Article 5

The foregoing provisions shall not apply to historic waters.

Article 6

The term mile means a nautical mile (1,852 metres) reckoned at sixty to one degree of latitude.

Article 7

Nothing in the provisions of this Convention shall be construed so as to preclude the conclusion, subject to the established rules of international law, of bilateral or multilateral agreements of a regional character to regulate all matters of fishing amongst States with common interests.

DOCUMENT A/CONF.19/C.1/L.7

Iceland: proposal

[*Original text: English*]
[*6 April 1960*]

Where a people is overwhelmingly dependent upon its coastal fisheries for its livelihood or economic development and it becomes necessary to limit the total catch of a stock or stocks of fish in areas adjacent to the coastal fisheries zone, the coastal State shall have preferential rights under such limitations to the extent rendered necessary by its dependence on the fishery.

In the case of disagreement, any interested State may initiate the procedure provided for in . . .

COMMENTARY

1. During the general debate the Icelandic delegation drew attention to the special case of a people dependent upon coastal fisheries for its subsistence. It was there shown that as far as Iceland is concerned the country is very barren. No minerals or forests exist there and most of the necessities of life have to be imported. These imports have to be financed through the exports, 97 % of which consist of fisheries products.

2. The importance of sea fisheries in the economy of a country may be judged in a variety of ways. In a memorandum entitled " The Economic Importance of the Sea Fisheries in Different Countries ",[10] prepared by the Food and Agriculture Organization of the United Nations for the first United Nations Conference on the Law of the Sea, this problem is extensively dealt with. In this memorandum it is pointed out that the most general statistical indicator of the importance of the fisheries in the economy of a country is the portion of the national income derived from the fisheries. From the table attached to the memorandum it will be seen that as far as those few nations are concerned who are fishing in Icelandic waters and who have objected to the present Icelandic fishery limits it is clear that their income derived from fisheries constitutes less than 1% of their national income. For Iceland on the other hand the fisheries constitute a matter of life or death.

3. A zone of twelve miles from the baselines goes a long way in taking care of the Icelandic requirements. It is, however, necessary to keep open the possibility for further action in Icelandic waters when experience demonstrates the necessity thereof. In that respect the policy would be to satisfy the Icelandic requirements on a priority basis as far as fishing in the coastal area is concerned. It should be emphasized that the exercise of such coastal jurisdiction would not at all mean that foreign nationals would be driven away from Icelandic waters or that they would suffer hardship, because they could still share in the utilization of vast fishing areas. Any assertions to the contrary are misleading and without foundation.

4. The first United Nations Conference on the Law of the Sea adopted a resolution on special situations relating to coastal fisheries.[11] In this resolution it is recommended that when, for the purpose of conservation, it becomes necessary to limit the total catch of a stock or stocks of fish in an area of the high seas adjacent to the territorial sea of a coastal State, any other States fishing in that area should collaborate with the coastal State to secure just treatment of such a situation, by establishing agreed measures which shall recognize any preferential requirements of the coastal State resulting from its dependence upon the fishery concerned while having regard to the interests of the other States. It is submitted that this system should be reinforced in two respects. On the one hand the resolution only amounts to a recommendation, whereas a specific article in a convention is called for. On the other hand, under the terms of the resolution all measures to be taken are subject to the approval and consent of those very States whose nationals are fishing in the area concerned and might be reluctant to implement the priority position of the coastal State in that area. Therefore a more effective procedure is proposed.

5. Any difference of opinion concerning the interpretation of the present proposal would be settled by the procedure indicated in article 9 of the Convention on Fishing and Conservation of the Living Resources of the High Seas adopted by the first United Nations Conference on the Law of the Sea, or any other procedure which might be adopted at this Conference. This would be a matter of drafting.

[10] *Official Records of the United Nations Conference on the Law of the Sea*, vol. I, p. 245.

[11] *Ibid.*, vol. II, annexes, document A/CONF.13/L.56, resolution VI.

DOCUMENT A/CONF.19/C.1/L.7/Rev.1

Iceland: revised proposal

[Original text: English]
[12 April 1960]

Where a people is overwhelmingly dependent upon its coastal fisheries for its livelihood or economic development and it becomes necessary to limit the total catch of a stock or stocks of fish in areas adjacent to the coastal fisheries zone, the coastal State shall have preferential rights under such limitations to the extent rendered necessary by its dependence on the fishery.

In the case of disagreement, any interested State may initiate the procedure provided for in the Convention on Fishing and Conservation of the Living Resources of the High Seas, adopted by the United Nations Conference on the Law of the Sea of 1958.

COMMENTARY

[*The text of paragraphs 1 to 4 is the same as that in document A/CONF.19/C.1/L.7.*]

5. Any difference of opinion concerning the interpretation of the present proposal would be settled by the precedure indicated in the Convention on Fishing and Conservation of the Living Resources of the High Seas, adopted by the first United Nations Conference on the Law of the Sea.

DOCUMENT A/CONF.19/C.1/L.10

Canada and United States of America: proposal

[Original text: English]
[8 April 1960]

1. A State is entitled to fix the breadth of its territorial sea up to a maximum of six nautical miles measured from the applicable baseline.

2. A State is entitled to establish a fishing zone contiguous to its territorial sea extending to a maximum limit of twelve nautical miles from the baseline from which the breadth of its territorial sea is measured, in which it shall have the same rights in respect of fishing and the exploitation of the living resources of the sea as it has in its territorial sea.

3. Any State whose vessels have made a practice of fishing in the outer six miles of the fishing zone established by the coastal State, in accordance with paragraph 2 above, for the period of five years immediately preceding 1 January 1958, may continue to do so for a period of ten years from 31 October 1960.

4. The provisions of the Convention on Fishing and Conservation of the Living Resources of the High Seas, adopted at Geneva on 27 April 1958, shall apply *mutatis mutandis* to the settlement of any dispute arising out of the application of the foregoing paragraphs.

DOCUMENT A/CONF.19/L.4 *

Report of the Committee of the Whole

[Original text: English]
[14 April 1960]

1. The rules of procedure adopted by the Conference at its 1st and 2nd plenary meetings provided, in rule 46, for the establishment of a Committee of the Whole. In rule 6 of the rules of procedure provision was made for the election by the Conference of the Chairman of the Committee, and at its 1st plenary meeting on 17 March 1960 the Conference elected Mr. José A. Correa (Ecuador). In accordance with rule 47 of the rules of procedure, the Committee of the Whole, at its 1st meeting on 21 March 1960, elected Mr. Max Sörensen (Denmark) to be its Vice-Chairman and Mr. Edwin Glaser (Romania) to be its Rapporteur.

2. The agenda as adopted by the Conference contained two substantive items: item 9 entitled " Consideration of the questions of the breadth of the territorial sea and fishery limits in accordance with resolution 1307 (XIII) adopted by the General Assembly on 10 December 1958 "; and item 10 entitled " Adoption of conventions or other instruments

* Incorporating documents A/CONF.19/L.4/Corr.1 and 2.

regarding the matters considered and of the Final Act of the Conference". At its 3rd plenary meeting the Conference decided to refer these two items to the Committee of the Whole.

3. At the 1st meeting of the Committee it was decided that it would commence its discussion of item 9 with a general debate. At the 5th meeting it was decided to refer in the general debate also to the proposals before the Committee. The general debate continued from the 1st to the 22nd meetings inclusive; sixty-seven delegations participated.

4. The Committee then turned to a detailed consideration of the various proposals. It having been decided in advance that voting should commence on 13 April 1960, the debate was closed at the 27th meeting and the Committee proceeded to vote on the proposals and amendments before it at its 28th meeting on 13 April 1960.

5. The proposals and amendments which had been submitted to the Committee were as follows.

6. The Union of Soviet Socialist Republics had presented a proposal (A/CONF.19/C.1/L.1), which it withdrew at the 27th meeting in favour of the eighteen-Power proposal (A/CONF.19/C.1/L.2/Rev.1).

7. Mexico had introduced a proposal (A/CONF.19/C.1/L.2) which it later withdrew in favour of the eighteen-Power proposal (A/CONF.19/C.1/L.2/Rev.1) of which Mexico was one of the sponsors.

8. A joint proposal (A/CONF.19/C.1/L.6) had been put forward by Ethiopia, Ghana, Guinea, Indonesia, Iran, Iraq, Jordan, Lebanon, Libya, Morocco, the Philippines, Saudi Arabia, Sudan, Tunisia, the United Arab Republic and Yemen. This was later withdrawn in favour of the eighteen-Power proposal (A/CONF.19/C.1/L.2/Rev.1).

9. A revised proposal (A/CONF.19/C.1/L.2/Rev.1) had been introduced by eighteen States: Ethiopia, Ghana, Guinea, Indonesia, Iran, Iraq, Jordan, Lebanon, Libya, Mexico, Morocco, the Philippines, Saudi Arabia, Sudan, Tunisia, the United Arab Republic, Venezuela and Yemen.

10. The United States of America had introduced a proposal (A/CONF.19/C.1/L.3), which was later withdrawn in favour of the joint proposal submitted by Canada and the United States (A/CONF.19/C.1/L.10).

11. Canada had submitted a proposal (A/CONF.19/C.1/L.4), which it later withdrew in favour of the joint Canadian and United States proposal (A/CONF.19/C.1/L.10).

12. At the 21st meeting, Canada and United States had jointly introduced a new proposal (A/CONF.19/C.1/L.10).

13. Two of the amendments before the Committee concerned the joint Canadian and United States proposal: the amendment introduced by Argentina (A/CONF.19/C.1/L.11) and the Guatemalan amendment (A/CONF.19/C.1/L.12).

14. An amendment submitted by the Philippines (A/CONF. 19/C.1/L.5) had been addressed equally to the proposals of the USSR, Mexico, the United States and Canada. This amendment having been incorporated in the revised proposal submitted jointly by the eighteen Powers, including the Philippines (A/CONF.19/C.1/L.2/Rev.1), the representative of the Philippines withdrew his separate amendment, at the 25th meeting.

15. Iceland had submitted for the consideration of the Committee a proposal (A/CONF.19/C.1/L.7) which it later revised (A/CONF.19/C.1/L.7/Rev.1).

16. A draft resolution submitted by Peru (A/CONF.19/C.1/L.8) was withdrawn at the 27th meeting for resubmission to the plenary Conference.

17. Cuba had put forward a draft resolution (A/CONF.19/C.1/L.9) which it withdrew at the 26th meeting.

18. At the 28th meeting the Committee proceeded to vote on all the proposals which had not been previously withdrawn, in the order in which they had been submitted, according to rule 41 of the rules of procedure.

19. The eighteen-Power Proposal (A/CONF.19/C.1/L.2/Rev.1) was rejected by 39 votes to 36, with 13 abstentions.

20. The proposal of Iceland (A/CONF.19/C.1/L.7/Rev.1) was adopted by 31 votes to 11, with 46 abstentions.

21. In accordance with rule 40, the Committee proceeded to vote on the amendments submitted to the joint Canadian and United States proposal (A/CONF.19/C.1/L.10). The first amendment submitted by Argentina relating to paragraph 3 of that proposal having been withdrawn before the commencement of the voting, the Committee voted on the second amendment by Argentina (A/CONF.19/C.1/L.11) which concerned paragraph 4 of the joint proposal. The amendment was rejected by 33 votes to 27, with 28 abstentions.

22. The amendment by Guatemala (A/CONF.19/C.1/L.12) to the joint Canadian and United States proposal was rejected by 44 votes to 3, with 41 abstentions.

23. The joint Canadian and United States proposal (A/CONF.19/C.1/L.10) was adopted by 43 votes to 33, with 12 abstentions.

24. In accordance with the practice of the United Nations and of the first United Nations Conference on the Law of the Sea, only the texts of the proposals favourably reported to the plenary Conference by the Committee of the Whole are set out in the annex to this report.

25. In concluding its work the Committee noted that the Conference had referred to it an additional substantive item concerning the adoption of a convention or other instruments to embody the decisions of the Conference on the questions before it. Following the practice established in the first United Nations Conference on the Law of the Sea in analogous circumstances, the Committee decided to leave to the Conference the determination of the most appropriate instrument or instruments in which to embody the terms of the proposal or proposals ultimately adopted by the Conference.

Annex

Text of the first proposal adopted by the Committee of the Whole at its 28th meeting on 13 April 1960

Where a people is overwhelmingly dependent upon its coastal fisheries for its livelihood or economic development and it becomes necessary to limit the total catch of a stock or stocks of fish in areas adjacent to the coastal fisheries zone, the coastal State shall have preferential rights under such limitations to the extent rendered necessary by its dependence on the fishery.

In the case of disagreement, any interested State may initiate the procedure provided for in the Convention on Fishing and Conservation of the Living Resources of the High Seas, adopted by the United Nations Conference on the Law of the Sea of 1958.

Text of the second proposal adopted by the Committee of the Whole at its 28th meeting on 13 April 1960

1. A State is entitled to fix the breadth of its territorial sea up to a maximum of six nautical miles measured from the applicable baseline.

2. A State is entitled to establish a fishing zone continuous to its territorial sea extending to a maximum limit of twelve nautical miles from the baseline from which the breadth of its territorial sea is measured, in which it shall have the same rights in respect of fishing and the exploitation of the living resources of the sea as it has in its territorial sea.

3. Any State whose vessels have made a practice of fishing in the outer six miles of the fishing zone established by the coastal State, in accordance with paragraph 2 above, for the period of five years immediately preceding 1 January 1958, may continue to do so for a period of ten years from 31 October 1960.

4. The provisions of the Convention on Fishing and Conservation of the Living Resources of the High Seas, adopted at Geneva on 27 April 1958, shall apply *mutatis mutandis* to the settlement of any dispute arising out of the application of the foregoing paragraphs.

DOCUMENT A/CONF.19/L.5/Rev.1 **

Peru: draft resolution

[*Original text: Spanish*]
[*22 April 1960*]

The Second United Nations Conference on the Law of the Sea,

Considering

That the first United Nations Conference on the Law of the Sea was convened pursuant to resolution 1105 (XI) of the General Assembly of the United Nations to examine the law of the sea " taking account not only of the legal, but also of the technical, biological, economic and political aspects of the problem ",

That the International Law Commission, in the report which served as the basis for the said Conference,[12] refrained from making any concrete proposals concerning the claims of certain States on the ground that it regarded itself as lacking competence " in the fields of biological science and economics adequately to study these exceptional situations ", but confined itself to drawing attention to them, stating that they might reflect " problems and interests which deserve recognition in international law " (commentary relative to the claims of exclusive fishing rights, on the basis of special economic circumstances),[13]

That the General Assembly of the United Nations at its thirteenth session decided that a second conference on the law of the sea should be called to consider the problems of the breadth of the territorial sea and fishery limits which the first Conference had not solved, and stated in its resolution 1307 (XIII) that it was " *Convinced* that to reach such agreement it is necessary to undertake considerable preparatory work so as to ensure reasonable probabilities of success ",

That the present Conference has not had at its disposal the data necessary for the study of the special situations referred to, which have been described to it, and in connexion with which attention is drawn to the vital significance of the fisheries as a source of proteins and fats for the peoples of the coastal States and to the fundamental importance of these fisheries to the economic development of the said States,

That, in view of the foregoing considerations the said situations are, where scientifically proved, such as to merit an exceptional régime,

Resolves that, where by reason of the special conditions, scientifically determined, of the sea near the coasts of a country, the fisheries, the livelihood of the population and the national economy are so manifestly interrelated that, in consequence, they are dependent on the exploitation of the living resources of the sea, the said country may, on the grounds of its exceptional situation, determine the extent of the area of jurisdiction in which it will apply measures of conservation and control governing the fisheries, and it is recognized that this country has a preferential right to exploit the fisheries, provided, however, that:

(*a*) It furnishes scientific evidence of the existence of the special conditions as aforesaid through technical geographical, biological and economic studies and surveys, prepared with the participation of specialized agencies of the United Nations, and that the results of the said studies shall be communicated to Members States through the Secretary-General of the United Nations;

(*b*) It does not discriminate *de facto* or *de jure* between foreign fishermen who submit to its measures of regulation and control;

(*c*) It does not adopt measures affecting maritime shipping and air traffic.

** This document was also submitted to the Committee of the Whole under the symbol A/CONF.19/C.1/L.8.

[12] *Official Records of the General Assembly, Eleventh Session, Supplement No. 9.*

[13] *Ibid.*, p. 38.

DOCUMENT A/CONF.19/L.6 ***

Cuba: draft resolution

[*Original text: Spanish*]
[*8 April 1960*]

The Second United Nations Conference on the Law of the Sea,

Considering

That the present Conference was called " for the purpose of considering further the questions of the breadth of the territorial sea and fishery limits ",[14]

That it is desirable to regulate the exercise of the right of fishing beyond the outer limit of the territorial sea, in order to take due account of the special requirements and interests of the coastal States in the matter of the conservation and exploitation of the resources of the sea,

That the first United Nations Conference on the Law of the Sea expressly recognized the preferential character of the requirements of those " countries or territories whose people are overwhelmingly dependent upon coastal fisheries for their livelihood or economic development " and of those

*** This document was also submitted to the Committee of the Whole under the symbol A/CONF.19/C.1/L.9.

[14] *Official Records of the General Assembly, Thirteenth Session, Supplement No. 18,* resolution 1307 (XIII).

" whose coastal population depends primarily on coastal fisheries for the animal protein of its diet and whose fishing methods are mainly limited to local fishing from small boats ",[15] in connexion with the conservation measures which it might become necessary to adopt to limit the total catch of a stock or stocks of fish in areas of the high seas,

That it must further be recognized that the requirements and interests of other coastal States in the matter of the conservation and exploitation of the resources of the sea may also be of a preferential nature, as for instance when the nationals of the said States regularly fish in areas of the high seas adjacent to the territorial sea.

Recommends the conclusion of the following additional protocol to the Convention on Fishing and Conservation of the Living Resources of the High Seas:

[15] *Official Records of the United Nations Conference on the Law of the Sea*, vol. II, annexes, document A/CONF.13/L.56, resolution VI.

ADDITIONAL PROTOCOL TO THE CONVENTION ON FISHING AND CONSERVATION OF THE LIVING RESOURCES OF THE HIGH SEAS

The States Parties to this Protocol,

Considering that when it becomes necessary to limit the total catch of a stock or stocks of fish in order to obtain the optimum sustainable yield therefrom, preferential consideration should be given to the special requirements and interests of the coastal State in the matter of the conservation and exploitation of the said resources,

Have agreed as follows:

Sole article

When the unilateral measures of conservation adopted by the coastal State consist in limiting the total catch of a stock or stocks of fish, sub-paragraph 2 (*c*) of article 7 of the Convention shall not be applicable in so far as this may be necessary to take due account of the special requirements and interests of the said State.

(Followed by the final clauses.)

DOCUMENT A/CONF.19/L.9

Indonesia, Iraq, Lebanon, Mexico, Morocco, Saudi Arabia, Sudan, United Arab Republic, Venezuela and Yemen: draft resolution

[*Original text: English and Spanish*]

[*22 April 1960*]

The Second United Nations Conference on the Law of the Sea,

Considering that there still exists wide disagreement on the question of the breadth of the territorial sea,

1. *Requests* the Secretary General of the United Nations to include in the provisional agenda of the twentieth session of the General Assembly an item regarding the advisability of convening, at an appropriate date, another United Nations conference to examine further the question of the breadth of the territorial sea;

2. *Requests* all States participants in this Conference which had declared their independence prior to 24 October 1945 to abstain from extending the present breadth of their territorial sea, pending the consideration of this question by the General Assembly at the aforesaid session;

3. *Recognizes* that, without prejudice to the question of the breadth of the territorial sea and pending the consideration of this question by the General Assembly, any State is entitled to exercise in the sea adjacent to its coast up to a limit of twelve nautical miles measured from the applicable baseline the same rights in respect of fishing and the exploitation of the living resources of the sea as it has in its territorial sea.

DOCUMENT A/CONF.19/L.10

Ghana: amendment to the second proposal in document A/CONF.19/L.4

[*Original text: English*]

[*22 April 1960*]

1. After paragraph 1 insert as paragraph 2 the following:

" 2. Where the coasts of two States are opposite or adjacent to each other the fixing by either or both of them of the breadth of the territorial sea shall not result in the elimination of a belt of at least three miles in width for the use of the international community."

2. Renumber paragraph 2, which becomes paragraph 3, and add as paragraph 4 the following:

" 4. No State is entitled to enter the outer zone of another State by means of a warship or the superjacent airspace by any military aircraft without prior notification to that State."

3. Renumber paragraph 3, which becomes paragraph 5, and add as paragraph 6 the following:

" 6. Where appropriate scientific findings demonstrate the necessity for the conservation of the living resources of the outer zone, the coastal State and the fishing State shall agree upon the necessary conservation measures."

4. Paragraph 4 becomes paragraph 7.

DOCUMENT A/CONF.19/L.11

Canada and United States of America: proposal

[*Original text: English*]
[*22 April 1960*]

1. A State is entitled to fix the breadth of its territorial sea up to a maximum of six nautical miles measured from the applicable baseline. For the purpose of the present Convention the term mile means a sea mile (1,852 metres) reckoned at sixty to one degree of latitude.

2. A State is entitled to establish a fishing zone in the high seas contiguous to its territorial sea extending to a maximum limit of twelve nautical miles from the baseline from which the breadth of its territorial sea is measured, in which it shall have the same rights in respect of fishing and the exploitation of the living resources of the sea as it has in its territorial sea.

3. Any State whose vessels have made a practice of fishing in the outer six miles of the fishing zone established by the coastal State, in accordance with paragraph 2 above, for the period of five years immediately preceding 1 January 1958, may continue to do so for a period of ten years from 31 October 1960.

4. The provisions of articles 9 and 11 of the Convention on Fishing and Conservation of the Living Resources of the High Seas, adopted at Geneva on 27 April 1958, shall apply *mutatis mutandis* to the settlement of any dispute arising out of the application of the foregoing paragraph.

5. The provisions of the present Convention shall not affect conventions or other international agreements already in force, as between States parties to them, or preclude the conclusion of bilateral or multilateral agreements for the purpose of regulating matters of fishing.

DOCUMENT A/CONF.19/L.12

Brazil, Cuba, and Uruguay: amendments to the second proposal in document A/CONF.19/L.4

[*Original text: Spanish*]
[*22 April 1960*]

1. Insert the following new paragraph after paragraph 3:

" 4. The provisions of paragraph 3 shall not apply or may be varied as between States which enter into bilateral, multilateral or regional agreements to that effect."

2. Remember paragraph 4, which becomes paragraph 5, and add the following paragraphs:

" 6. Notwithstanding the provisions of the preceding paragraphs, but subject to the paragraphs below, the coastal State has the faculty of claiming preferential fishing rights in any area of the high seas adjacent to its exclusive fishing zone when it is scientifically established that a special situation or condition makes the exploitation of the living resources of the high seas in that area of fundamental importance to the economic development of the coastal State or the feeding of its population.

" 7. Any other State concerned may request that any such claim be determined by the special commission provided for in article 9 of the Convention on Fishing and Conservation of the Living Resources of the High Seas, adopted at Geneva on 26 April 1958.

" 8. A special situation or condition may be deemed to exist when:

" (*a*) The fisheries and the economic development of the coastal State or the feeding of its population are so manifestly interrelated that, in consequence, that State is greatly dependent on the living resources of the high seas in the area in respect of which preferential fishing is being claimed;

" (*b*) It becomes necessary to limit the total catch of a stock or stocks of fish in such areas, in accordance with the provisions of the Convention referred to in paragraph 2 above.

" 9. The commission will determine on the basis of scientific criteria whether special conditions exist, after a hearing at which both the coastal State and fishing States concerned shall have the right to present all relevant evidence, technical, geographical, biological and economic.

" 10. The coastal State, to the extent and for the period of time determined by the commission, shall have preferential fishing rights in the area in question, under such limitations and to such extent as the commission finds necessary by reason of the dependence of the coastal State on the stock or stocks of fish, while having regard to the interests of any other State or States in the exploitation of such stock or stocks of fish."

DOCUMENT A/CONF.19/L.13

Iceland: amendment to the second proposal in document A/CONF.19/L.4

[*Original text: English*]
[*22 April 1960*]

Add to paragraph 3 the following:

" The provisions of this paragraph shall not apply to the situation where a people is overwhelmingly dependent upon its coastal fisheries for its livelihood or economic development."

DOCUMENT A/CONF.19/L.16

Declaration by the Head of the Peruvian delegation

[*Original text: Spanish*]
[*27 April 1960*]

1. As was stated by its representatives both at the present Conference and at the thirteenth session of the General Assembly of the United Nations in 1958, and as is clear from the preamble of the proposal submitted by its delegation to the Committee of the Whole and to the Conference in plenary meeting,[16] Peru opposed the convening of this conference on the grounds of insufficient scientific and technical preparation; that preparation would have furnished the Conference with the necessary basis for its discussions and conclusions, as contemplated in the measures leading up to the convening of the Conference.

2. At the first United Nations Conference on the Law of the Sea, in 1958, the Peruvian delegation submitted a proposal which accepted the idea of periodic meetings at not too infrequent intervals, provided that there was adequate scientific and economic preparation.[17]

3. Nevertheless, Peru attended this Geneva Conference in its capacity as a Member State of the United Nations especially interested in the problems included in the agenda. Peru participated in the Conference in order to set forth its exceptional case, for it considers that the existence of a special situation should be recognized in the case of coastal States which can prove that theirs is a special situation by reason of geographical position, the existence of peculiar geobiological conditions of specific economic and social conditions.

4. In our opinion, the Conference was held without due regard for the need of elementary study material, with the aim of hurriedly securing uncertain undertakings intended to maintain for as long as possible privileges at variance with the ethics of international equality, and of closing the road to equality of economic opportunity to the under-developed countries.

5. As far as Peru is concerned, it can claim a legal title based on vicinity and on exclusive possession and use since time immemorial. In addition, Peru can claim economic title by reason of the direct dependence of its agriculture on the resources of the sea, which likewise affect the well-being of its coastal and rural populations and the legitimate expectations of its developing industry, called upon to provide the necessary resources for the importation of basic food products for its people.

6. Moreover, Peru can plead, on social grounds, the under-nourishment and progressive and alarming increase of its population, the problem of employment, and the individual and collective welfare of the population. Lastly, at the highest human level, Peru is entitled to claim that it is defending man as such, in keeping with the moral principles of modern international law which are receiving growing recognition in institutions and in law.

7. We are faced, Mr. President, with the failure of this Conference with regard to the substance of its ambitious agenda. None of the proposals relating to the delimitation of the territorial sea and of the fishing zone obtained the support of the requisite two-thirds majority, and as a consequence no formal conclusions were reached on this matter.

8. Fortunately, as an idealogical and moral compensation for that failure, many delegations have repeatedly advocated the preferential rights of the coastal State to the fisheries in its adjacent sea and the principle of an exception in favour of countries which, like Peru, are in a special situation. This recognition will make a deep mark on contemporary international law and lead to a decisive new step forward in the development of the law of the sea.

9. In view of the circumstances created by the failure of this Conference the Peruvian delegation states, in the name of its Government, that the rules of public law enacted by Peru regarding the exercise of its maritime jurisdiction continue in force, with the important provision that these rules do not hamper sea and air navigation for legitimate purposes and do not discriminate as between foreign fishermen who submit to our measures of regulation and control.

Signed: Alberto ULLOA
Chairman of the Delegation of Peru

[16] See A/CONF.19/L.5/Rev.1 above.

[17] *Official Records of the United Nations Conference on the Law of the Sea*, vol. II, annexes, document A/CONF.13/L.10.

Final Act of the Second United Nations Conference on the Law of the Sea

DOCUMENT A/CONF.19/L.15 †

[Original text: English]
[26 April 1960]

1. The United Nations Conference on the Law of the Sea, which met at the European Office of the United Nations at Geneva from 24 February to 27 April 1958, adopted a resolution on 27 April 1958 in which it requested the General Assembly of the United Nations to study at its thirteenth session the advisability of convening a second international conference of plenipotentiaries for further consideration of the questions left unsettled at that Conference.[18] The General Assembly of the United Nations, by resolution 1307 (XIII), adopted on 10 December 1958, decided that a second international conference of plenipotentiaries on the law of the sea should be called for the purpose of considering further the questions of the breadth of the territorial sea and fishery limits.

2. The Second United Nations Conference on the Law of the Sea accordingly met at the European Office of the United Nations at Geneva from 17 March to 26 April 1960.

3. The Governments of the following eighty-eight States were represented at the Conference: Albania, Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Cameroun, Canada, Ceylon, Chile, China, Colombia, Costa Rica, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, El Salvador, Ethiopia, Finland, France, Federal Republic of Germany, Ghana, Greece, Guatemala, Guinea, Haiti, Holy See, Honduras, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Japan, Jordan, Republic of Korea, Laos, Lebanon, Liberia, Libya, Luxembourg, Federation of Malaya, Mexico, Monaco, Morocco, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Romania, San Marino, Saudi Arabia, Spain, Sudan, Sweden, Switzerland, Thailand, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, Republic of Viet-Nam, Yemen, Yugoslavia.

4. At the invitation of the General Assembly, the following specialized agencies were represented at the Conference by observers:

International Labour Organisation;
Food and Agriculture Organization of the United Nations;
International Civil Aviation Organization;
World Health Organization;
International Telecommunication Union;
World Meteorological Organization;
Inter-governmental Maritime Consultative Organization.

5. At the invitation of the General Assembly, the International Atomic Energy Agency and the following intergovernmental organizations were also represented by observers at the Conference:

Conseil Général des Pêches pour la Méditerranée;
Inter-American Tropical Tuna Commission;
International Institute for the Unification of Private Law;
League of Arab States;
Organization for European Economic Co-operation;
Permanent Conference for the Exploitation and Conservation of the Maritime Resources of the South Pacific;

6. The Conference elected His Royal Highness Prince Wan Waithayakon Krommun Naradhip Bongsprabandh (Thailand) as President.

7. The Conference elected as Vice-Presidents Albania, Argentina, Canada, China, France, Ghana, Guatemala, Iran, Italy, Mexico, Norway, Poland, Switzerland, the Union of Soviet Socialist Republics, the United Arab Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

8. The following committees were set up:

General Committee

Chairman: The President of the Conference.

Committee of the Whole:

Chairman: Mr. José Antonio Correa (Ecuador)
Vice-Chairman: Mr. Max Sörensen (Denmark)
Rapporteur: Mr. Edwin Glaser (Romania)

Credentials Committee

Chairman: Mr. Nathan Barnes (Liberia)

9. The Secretary-General of the United Nations was represented by Mr. C. A. Stavropoulos, the Legal Counsel. Mr. Yuen-li Liang, Director of the Codification Division of the Office of the Legal Affairs of the United Nations, was appointed Executive Secretary.

10. The General Assembly, by its resolution convening the Conference, referred to the Conference for its information the records of the United Nations Conference on the Law of the Sea held in 1958.[19]

11. The Conference also had before it certain documents submitted by the Secreatriat of the United Nations. These included a provisional agenda (A/CONF.19/1), provisional rules of procedure (A/CONF.19/2) and a memorandum on the method of work and procedures of the Conference (A/CONF.19/3). The Conference took note of the memorandum on the method of work and procedures of the Conference and adopted the provisional agenda; the rules of procedure, as amended by the Conference (A/CONF.19/7), were also adopted.

12. The Conference referred to the Committee of the Whole the two substantive items on its agenda entitled: "Consideration of the questions of the breadth of the territorial sea and fishery limits in accordance with resolution 1307 (XIII) adopted by the General Assembly on 10 December 1958" and "Adoption of conventions or other instruments regarding the matters considered and of the Final Act of the Conference." The Committee of the Whole held 28 meetings from 21 March to 13 April 1960, and on 14 April 1960 submitted its report (A/CONF.19/L.4) to the Conference.

† Incorporating document A/CONF.19/L.15/Corr.1.

[18] *Ibid.*, document A/CONF.13/L.56, resolution VIII.

[19] *Official Records of the United Nations Conference on the Law of the Sea*, vol. I to VII.

13. The Conference adopted only the two resolutions set out in the annex.

IN WITNESS WHEREOF the representatives have signed this Final Act.

DONE AT GENEVA this twenty-seventh day of April, one thousand nine hundred and sixty, in a single copy in the Chinese, English, French, Russian and Spanish languages, each text being equally authentic. The original texts shall be deposited in the archives of the United Nations Secretariat.

Annex

I

The Second United Nations Conference on the Law of the Sea,

Considering that, whatever the result of the Conference, its records will be of the utmost value for the correct interpretation of its work;

Recalling the statement made by the representative of the Secretary-General at the 2nd plenary meeting of the Conference concerning the possibility and cost of publishing the complete text of the statements made at the Conference in the original in a trilingual record, produced from the sound recordings and the texts of speeches as supplied, in most cases, by delegations;

Recommends to the General Assembly of the United Nations that at its fifteenth session it approve the necessary budget appropriations for the publication, in the form described above, of a complete verbatim record of the discussions at the Second United Nations Conference on the Law of the Sea.

8th plenary meeting,
21 April 1960.

II

The Second United Nations Conference on the Law of the Sea,

Having considered the question of fishery limits,

Recognizing that the development of international law affecting fishing may lead to changes in the practices and requirements of many States,

Recognizing further that economic development and the standard of living in many coastal States require increased international assistance to improve and expand their fisheries and fishing industries, which in many cases are handicapped by a lack of modern equipment, technical knowledge, and capital,

1. *Expresses the view* that technical and other assistance should be available to help States in making adjustments to their coastal and distant-waters fishing in the light of new developments in international law and practices;

2. *Draws the attention* of Governments participating in the Conference to the facilities for assistance already available through the United Nations and specialized agencies;

3. *Urges* the appropriate organs of the United Nations and the specialized agencies, and in particular the Food and Agriculture Organization of the United Nations, the Technical Assistance Board, and the United Nations Special Fund to give sympathetic and urgent consideration to any requests for assistance made by member Governments based on the new developments, and also urges them to consider, jointly or separately, further comprehensive studies and programmes of technical and material assistance;

4. *Invites* the Economic and Social Council to inform the General Assembly through its annual reports, of the action taken in response to this resolution;

5. *Requests* the Secretary-General of the United Nations to bring this resolution to the attention of the appropriate organs of the United Nations and the specialized agencies for suitable action at the earliest practicable time.

13th plenary meeting,
26 April 1960.