

Second United Nations Conference on the Law of the Sea

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Mexico: proposal

Extract from the *Official Records of the Second United Nations Conference on the Law of the Sea (Summary Records of Plenary Meetings and of Meetings of the Committee of the Whole, Annexes and Final Act)*

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 as 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

⁷ *Official Records of the General Assembly, Eleventh Session, Supplement No. 9, p. 4.*

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.

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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