

Second United Nations Conference on the Law of the Sea

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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**

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)*

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.

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 multi-lateral 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 in 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