

Second United Nations Conference on the Law of the Sea

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First Meeting of the Committee of the Whole

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)*

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. Sørensen (Denmark).

Mr. Sørensen (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 1958¹ 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

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

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

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 thought 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

³ *Official Records of the General Assembly, Eleventh Session, Supplement No. 9*, pp. 4 ff.

⁴ *Ibid.*, p. 4.

⁵ *Ibid.*, p. 13.