Second United Nations Conference on the Law of the Sea

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Tenth 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)*

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-