

# **Second United Nations Conference on the Law of the Sea**

Geneva, Switzerland  
17 March – 26 April 1960

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**A/CONF.19/C.1/SR.11**

## **Eleventh 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)*

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. Sørensen (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, explicitly or implicitly, 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. International 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 off-shore. 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,<sup>1</sup> 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,

<sup>1</sup> *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 overflow 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*,<sup>2</sup> 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.<sup>3</sup> 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".<sup>4</sup> 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

<sup>2</sup> *I.C.J. Reports 1951*, p. 116.

<sup>3</sup> *Official Records of the General Assembly, Eleventh Session, Supplement No. 9*, p. 13.

<sup>4</sup> *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 Nor-

way'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.