

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

Geneva, Switzerland  
17 March – 26 April 1960

Document:-  
**A/CONF.19/C.1/SR.12**

## **Twelfth 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)*

## TWELFTH MEETING

Friday, 1 April 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. Muhtadi (Jordan), Mr. Chhat Phlek (Cambodia), Mr. Orkomies (Finland), Mr. Ustor (Hungary) and Mr. Baig (Pakistan)

1. Mr. MUHTADI (Jordan) said that Jordan, as a staunch believer in the rule of law, was anxious to contribute to what it hoped would be the ultimate success of the Conference. The conflicting points of view expressed were undoubtedly inspired in the majority of cases by purely national interests, which was quite understandable, but, to reconcile the views of all the nations assembled there, the problems confronting them must be faced objectively and dispassionately. Until the basic issue underlying all the various views was determined, and criteria discovered for testing the validity of such views, all might be held to be equally valid in international law.

2. He suggested that the basic issue was the conflict between the principle of the freedom of the seas and the principle of the right of the coastal State to extend its sovereignty over the coastal seas. The obvious way of reconciling divergent views was to seek a compromise, but experience had shown that no compromise was likely to be reached where the vital interests of the States concerned were involved. The only feasible alternative was the choice between two evils, an accepted practice in municipal law. Two well-known principles of Islamic law were that it was better to avoid an injury than to incur a benefit, and that a lesser injury should be tolerated in order to prevent a greater injury. Although analogies between municipal law and international law were not always valid, they might apply in the present case, since only by some such approach could the deadlock be broken. Consequently, where a coastal State laid claim to an extension of its territorial sea for purposes of security, that claim should take precedence over the claims of other States to treat such waters as the high seas for purposes of fishing and trade. Even if the interests of certain States would be injured if the breadth of the territorial sea were extended, greater injury would be inflicted on coastal States if the extension were not granted. His delegation therefore favoured twelve miles as the breadth of the territorial sea and would vote accordingly.

3. Mr. CHHAT PHLEK (Cambodia) said that, with regard to the fisheries zone, it had become apparent that there was a general readiness to recognize the coastal State's right to establish an exclusive fishing

zone up to a limit of twelve nautical miles from the baseline. The Cambodian delegation supported that formula, which had the merit of protecting the interests of new countries, which were not yet ready to develop their fishery resources, while at the same time not injuring those of large countries which possessed the means and experience to find almost inexhaustible fishing grounds in the high seas, sometimes at great distances from their own coasts.

4. With regard to the territorial sea, there was still a wide divergence of views. The Cambodian delegation only wished to point out that, since a great many States had already declared a breadth of twelve nautical miles or more, such States were unlikely to ratify a Convention which would oblige them to revert to a narrower breadth. Legal rules must be based on realities and not on abstract principles which were not unanimously accepted. The Cambodian delegation would accordingly support any reasonable proposal which commanded the support of the majority.

5. The Conference had met for the sole purpose of settling the two questions on its agenda. He was therefore obliged to point out that the claims formulated by another delegation to a group of islands situated in the Cambodian territorial sea, and which indisputably belonged to the Kingdom of Cambodia, were not a matter for the Conference.

6. Mr. ORKOMIES (Finland) said that in accordance with old Scandinavian rule and practice his Government applied the limit of four nautical miles for its territorial sea. Although the intention of Finland was not to widen its territorial sea, at the 1958 Conference it had declared its willingness to consider a proposal for a moderate extension of the general maximum limit, if that would help to reach agreement. It still maintained its conciliatory attitude, and, since there seemed to be no possibility of agreement without providing for a special fishing zone, it was prepared to consider proposals on that aspect also. If, as his delegation hoped, agreement was finally reached, considerable changes would ensue in fishing conditions all over the world. Measures should therefore be considered for protecting the legitimate interests of the peoples of fishing States, at least during a transition period. On the other hand, in exceptional cases where a country's economy depended almost entirely upon fishing, it would be only fair to take into account the possible hardships to which it might be exposed by any restrictive decision. The debates had clearly shown the difficulty and complexity of the problems before the Conference, and Finland sincerely hoped that a solution might be found on the basis of genuine appreciation of common interests and the widest possible acceptability.

7. Mr. USTOR (Hungary) said that, although Hungary had no sea coast, Budapest was in some ways like a maritime port, since it had a small fleet of merchant vessels navigating both on the Danube and on the seas. That narrow outlet did not cover Hungary's export and import needs and it was obliged to use foreign sea ports and shipping also; but its ships had never been restricted in the exercise of their right of innocent passage. The Hungarian delegation had taken an active part in the deliberations of the 1958 Conference, which had re-

cognized, among the principles concerning the rights of land-locked States, certain rules which were closely connected with the problems before the second Conference. Such States were deeply interested in finding universally acceptable rules for the breadth of the territorial sea and contiguous fishing zones, not only because agreement on those issues would help to relax international tensions and preserve world peace, but also because those problems were of practical importance to the land-locked States.

8. Some speakers had asserted that the interests of all States, whether or not they had a sea coast, would be best served by the widest possible area of high seas and, hence, by the narrowest possible territorial sea. His delegation could not endorse that view, which failed to take into account existing circumstances, realities and international trends. It had been rightly said that throughout its history the development of international law had been influenced by the requirements of international life. Everyone attending the Conference seemed to be agreed on that principle: even the delegations which had advocated the narrowest possible territorial sea had abandoned the obsolete idea of the three-mile limit and had proposed instead a maximum limit of six miles.

9. The Hungarian delegation could not, however, share that view, since the purpose of the Conference was to achieve an agreement which would correspond to the wishes and interests of most, if not all, States. The right of States to extend their territorial sea up to twelve miles was not only maintained in legal theory, but had been firmly established in practice. The number of States which had fixed the breadth of their territorial sea at twelve miles was constantly increasing; but practice could not be ignored, particularly in view of the insistence of new States on extending their territorial sea for reasons of security and economic interest. In establishing the *lex ferenda* in international law, the *lex lata* of national legislation could not be disregarded.

10. In its adherence to the principle of the peaceful co-existence of States and in its belief that all international problems could be solved by peaceful negotiation, Hungary was convinced that a common denominator between the divergent interests of States could be found by adopting a flexible formula, complying with all reasonable requirements. Accordingly, his delegation would vote in favour of the USSR proposal (A/CONF.19/C.1/L.1) and against all proposals refusing recognition of a twelve-mile limit.

11. Mr. BAIG (Pakistan) said that the issues before the Conference, though controversial, were neither complex nor difficult, and the differences between the States were not so formidable that they could not be resolved if approached in a spirit of compromise and with full recognition of the crucial importance of the occasion. It was a great achievement that the first United Nations Conference on the Law of the Sea had reached general agreement on 113 articles of wide scope and variety. The only two questions which remained to be settled were the breadth of the territorial waters and fishery rights. In the four apparently different proposals which had been tabled on those two issues there was common ground which, if properly discerned, could form the basis of a generally acceptable compromise formula.

12. The USSR proposal (A/CONF.19/C.1/L.1) for extending the limit of the territorial sea up to twelve miles seemed, superficially, to be backed by article 3 of the articles prepared by the International Law Commission,<sup>1</sup> which contained the Commission's view that international law did not permit an extension of the territorial sea beyond twelve miles. That opinion was, however, qualified, in the Commission's commentary on the article,<sup>2</sup> by the statement that the validity of such an extension was restricted to a State which either did not object to it, or recognized it, or was a party to a judicial or arbitral award which recognized it. The Commission had further circumscribed the scope of such extension by making it conditional on historic rights. The mere convening of the present Conference was in itself a negation of the assumption that a twelve mile territorial sea had the backing of the International Law Commission.

13. On the other hand, the International Law Commission had recognized that the rule fixing the breadth of the territorial sea at three miles had been widely applied in the past. It followed that proposals to extend the territorial waters beyond the traditional three-mile limit were in the nature of compromises over historic rights in relation to the freedom of the high seas. Of the States mentioned in the synoptic table prepared by the Secretariat (A/CONF.19/4), those which had a territorial sea of less than twelve miles exceeded by about three times those which claimed a territorial sea of twelve miles. The list was, of course, not exhaustive and it would be helpful if it could be completed by the Secretariat. Furthermore, the inclusion in the table, under fishing limits, of the power claimed by India to establish conservation zones within 100 miles was confusing and should be corrected.

14. In the English Channel, the minimum width in miles of navigable channel was seventeen miles. If the territorial sea were extended to twelve miles for a length of thirty miles there would be no high seas left, while in the Malacca Strait, for five miles between Aruah Islands and Port Swettenham, the navigable channel would be restricted to a width of one mile, and in the Aegean Sea a number of places would cease to be high seas. Such instances could be multiplied.

15. From the purely economic angle, shipping costs would go up should coastal States exercise control over vessels passing through their territorial waters, because of delay due to controls or detours to avoid controls. That would result in no benefit either to the producing or to the consuming countries of the world, least of all to the common man, who would be the chief sufferer. Perhaps such economic considerations would be less important were there some real political or security advantages for the coastal States, but none were apparent. On the contrary, the power to extend the territorial sea involved concurrent political and security responsibilities and obligations which the majority of States might find it extremely difficult and expensive to undertake. The consequent navigational difficulties had been vividly described by the leader of the United States delegation at the 4th meeting.

<sup>1</sup> *Official Records of the General Assembly, Eleventh Session, Supplement No. 9*, p. 4.

<sup>2</sup> *Ibid.*, pp. 12-13.

16. The delegation of Pakistan believed that leaving the delimitation of the territorial sea flexible between three and twelve miles would hardly contribute to international uniformity; the only uniformity which could result from such a decision would be the gradual extension of the territorial sea to a limit of twelve miles, with all its adverse effects on navigation.

17. The first part of the Mexican proposal (A/CONF.19/C.1/L.2) was similar to that of the USSR and the foregoing arguments applied to it equally. The second part was an ingenious scheme providing for a larger fishing zone in compensation for a correspondingly smaller territorial sea. It suggested that if the breadth of the territorial sea were from three to six miles, the fishing zone might be extended up to eighteen miles. The proposal, cleverly designed to persuade States to content themselves with the minimum territorial sea in exchange for extended fishing rights, had the disadvantage that it would contribute not to uniformity but to the lack of it.

18. The United States proposal (A/CONF.19/C.1/L.3) had the merit that it sought a compromise between the aims of the States which asked for a twelve-mile territorial sea and those which would prefer a three-mile territorial sea, between the aspirations of large maritime fishing States and new States in the process of developing their fishing resources.

19. The Canadian proposal (A/CONF.19/C.1/L.4) recognized the paramount interest of the coastal State in the living resources of its adjacent fishing zone, while the consideration behind the United States proposal was that those maritime States which had built up large fishing fleets should have qualified historic fishing rights reserved for them. It appeared that Canada's main objection to the United States proposal was that it sought to protect, with some limitations, the historic rights of fishing States in perpetuity. That objection had, indeed, much force, but before existing rights were extinguished by legislation a period of time was normally allowed for the affected party to make necessary adjustments. A compromise might perhaps be reached between the United States and Canadian proposals if the historic rights which the United States proposal sought to safeguard could be limited over a period of time ranging from five to ten years. Within that period of time, the large maritime fishing States could devote their attention to locating new fishing grounds on the high seas and gradually moving out of existing fishing grounds situated within the outer six-mile fishing belt. Such a proposal would, in the view of his delegation, be reasonable and fair, because many fishing States had, by means of large fishing fleets and comprehensive surveys, discovered fishing grounds which were open also to the coastal States. If the fishing States had not surveyed the waters of coastal States, some coastal States with meagre and undeveloped resources would perhaps never have discovered those rich fishing zones for years to come. In consideration of the expenditure incurred and the efforts made by the fishing States, therefore, the coastal States might gracefully permit the fishing States which claimed historic rights a reasonable time in which to quit the outer six-mile zone. The delegation of Pakistan had no strong views as to whether such historic rights should be safeguarded by law or by bilateral or multilateral agreements.

20. The annex to the United States proposal provided for machinery for arbitration, and the effective arbitral procedure already accepted in the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas might, *mutatis mutandis*, be made applicable in the context of the United States proposal.

21. The delegation of Pakistan retained an open mind on the whole question, and was most anxious that a fair agreement should be achieved in order to put an end, once and for all, to the existing uncertainty and lack of uniformity. It believed that the proposal most likely to secure general acceptance was a six-mile territorial sea with a further six-mile fishing zone, and it would support that proposal.

The meeting rose at 11.55 a.m.

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### THIRTEENTH MEETING

Monday, 4 April 1960, at 10.50 a.m.

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Chairman: Mr. José A. CORREA (Ecuador)

Tributes to the memory of H.M. Tuanku Sir Abdul Rahman, Yang Di-Pertuan Agong, of the Federation of Malaya, and to the memory of H.M. Norodom Suramarit, King of Cambodia

*On the proposal of the Chairman, the members of the Committee observed a minute of silence in tribute to the memory of the King of the Federation of Malaya and the King of Cambodia.*

1. Sir Gerald FITZMAURICE (United Kingdom) wished to tender to the delegation of Malaya the sincere and heartfelt sympathies of the United Kingdom delegation in the loss of so distinguished and venerable a leader. The late King of the Federation of Malaya had taken a prominent part in the negotiations which had led up to Malayan independence, and in the drafting of the Malayan Constitution, under which he had become the first Head of the new State. His dedicated endeavours had earned the respect of the world at large, and his death would be grievously felt in his own country, where his name would be long remembered. As a member of the Commonwealth, the United Kingdom would be one with the Malayan people in their sorrow. The leader of the United Kingdom delegation, who was temporarily absent from Geneva, would wish to be personally associated with that expression of sympathy.

2. Mr. GROS (France) emphasized that the ties linking Cambodia and France were of very long standing; the French people and Government could not therefore be unmoved by the grievous blow that had befallen the Cambodian people. In a reign of only five years, the late King of Cambodia, who had felt the deepest concern for social integration, unity and religious development in his country, had sought to unite the different sections of the population around the throne—an endeavour which he had brought to a most successful conclusion.