Second United Nations Conference on the Law of the Sea

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Fourteenth Meeting of the Committee of the Whole

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37. The case of countries with large numbers of their people dependent upon distant-water fishing for their livelihood deserved consideration, and it was impossible to remain insensible to the economic and human hardship which the complete exclusion of such countries would cause. On the other hand, his delegation appreciated the coastal State's anxiety to preserve its offshore fisheries. In contrast to the proposal it had put forward at the first Conference,[7] the United States delegation was now seeking to meet the legitimate needs of coastal States by imposing a limit on the extent to which non-coastal States entitled by reason of past practice to fish in the outer six-mile zone could continue to do so. Two criticisms might be levelled against that proposal. First, it should have placed a time-limit on the right to fish acquired by a fishing practice of five years' standing. That historic right could not be based on prescription, and the principle of perpetuity was therefore inapplicable. The time-limit should be regarded as providing a period for readjustment that would enable the fishing State to find other fishing grounds, or to adapt its economy to minimize the economic loss to its population. It should also give the coastal State enough time to develop its fishing potential in such a way that, once it had acquired exclusive rights over its fishing zone, it would be able to exercise them in a manner designed to secure the maximum sustainable yield to the greatest benefit of those members of its population for whom fish formed the staple item of diet.

38. The second weakness of the United States proposal was that it failed to protect the coastal State against depletion of the stock or stocks of fish in the outer zone. The principle of conservation had already been recognized in the Convention on Fishing and Conservation of the Living Resources of the High Seas adopted in 1958; surely that principle was equally valid in respect of the outer zone, given that the primary interest of the coastal State was involved in both cases.

39. On those two counts the United States proposal failed to safeguard the coastal State's legitimate needs.

40. Furthermore, he urged that where, during any period, the need for conservation was scientifically demonstrated, the non-coastal State should be obliged to enter into an agreement with the coastal State or States for purposes of initiating the necessary conservation measures. If no agreement could be reached, the coastal State, or any of the States concerned, should be at liberty to refer the matter to the expert commission envisaged in the new United States proposal. That commission should be empowered to determine not only whether the situation was ripe for conservation measures, but also the nature of the measures to be taken. It should also have power to decide whether the non-coastal State could continue to fish, and to what extent, pending final decision. He hoped there would be overwhelming support for the proposal that the proper method of settling disputes was by recourse to an expert and impartial body: only thus could the interests at stake be effectively protected and peace maintained.

41. While supporting a twelve-mile limit, his delegation might table a compromise proposal with a view to reaching agreement, should necessity arise. The Conference must not fail in its task of reconciling equitably the interests of both coastal and non-coastal States, thereby furthering international harmony.

The meeting rose at 12.30 p.m.

[7] *Ibid.*, document A/CONF.13/L.29.

FOURTEENTH MEETING

Monday, 4 April 1960, at 3.15 p.m.

Chairman: Mr. José A. CORREA (Ecuador)

Consideration of the questions of the breadth of the territorial sea and fishery limits in accordance with resolution 1307 (XIII) adopted by the General Assembly on 10 December 1958 *(continued)*

GENERAL DEBATE *(continued)*

Statements by Mr. Cuadros Quiroga (Bolivia), Mr. Erkin (Turkey), Mr. Subardjo (Indonesia) and Mr. Melo Lecaros (Chile)

1. Mr. CUADROS QUIROGA (Bolivia) said it was generally agreed that the first United Nations Conference on the Law of the Sea had been a success and had made considerable progress towards the codification of international maritime law. None of the four proposals submitted at the second Conference regarding the breadth of the territorial sea and the contiguous zone (A/CONF.19/C.1/L.1-L.4) appeared likely, however, to be able to muster the required two-thirds majority. Each country, not unnaturally, wished to preserve what it conceived to be its own interests and was supporting its position with weighty historical arguments. It was however, becoming clear that, eventually, for the sake of international harmony, a compromise would have to be worked out reconciling the divergent national interests. In effect, what was needed for the purpose of the progressive development of international law was the development of international relations.

2. At one time it had seemed that the two extreme schools of thought — that of the adherents of a three-mile limit and that of countries claiming 200 miles — were utterly irreconcilable. The General Assembly had wisely thought that some middle ground could be found, and it was now apparent that a majority of States was prepared to consider a twelve-mile limit, although differences remained about the status to be accorded to the outer six miles. The United States proposal (A/CONF.19/C.1/L.3) made provision for fishing rights, whereas the other proposals did not. A conflict still subsisted between the concept of sovereignty and that of historic fishing rights. The really decisive factors would be practice and the extent to which various countries were dependent on supplies of fish. Fishing on the high seas was not carried on exclusively by the fishing fleets of the more

highly developed countries; it was vital also to many smaller countries. Any abrupt suspension of such fishing would involve them in serious losses.

3. The Committee should therefore examine the proposals before it with the greatest care. The United States proposal seemed the one likely to inflict least damage, and hence might yet form the basis of a compromise. Any development of international law had to take reality into account — and reality was not static. Admittedly, the question of sovereignty was a thorny one, but an effort should be made to develop principles out of existing realities.

4. The Conference had been convened solely to decide the breadth of the territorial sea and the contiguous zone. Bolivia, although at present a land-locked country, would collaborate to the full, but the Bolivian delegation wished to make it quite clear that Bolivia would not vote for any thing or in any way that might compromise the aspirations of the Bolivian people and their indefeasible right to recever their coastal territories.

5. Mr. ERKIN (Turkey) said that his delegation was attracted by the proposals submitted by the United States (E/CONF.19/C.1/L.3) and Canada (A/CONF.19/C.1/L.4) which embodied analogous provisions concerning the breadth of the territorial sea and the establishment of a contiguous fishing zone, with a total breadth of twelve miles. While his delegation welcomed the idea of establishing such a zone and of recognizing the coastal State's exclusive fishing rights therein, it considered it important to reconcile the divergent interests of the coastal State on one hand and, on the other, the interests of States which claimed for their nationals the right to fish in the contiguous zone. Whereas the Canadian proposal made no provision for the rights of foreign fishermen, the United States proposal would enable foreign fishermen to continue their activities in the contiguous zone subject to certain conditions, though without any limitation as to duration. The Turkish delegation considered that if the exercise of that prerogative were not made subject to a time limit, the coastal State's exclusive fishing rights would become uncertain. Accordingly, his delegation thought that a reasonable transition period should be specified, say five or even ten years, on the expiry of which the right of foreign fishermen to fish in the coastal State's contiguous zone would be renegotiated and form the subject of bilateral or multilateral agreements. That method would safeguard both the principle and the interests that were involved.

6. The establishment of a transition period would naturally mean that the conditions on which the fishing vessels of foreign States could exercise their prerogatives during that period would have to be specified. Although some difficulties might arise in its application in practice, the United States proposal, under which fishing would be restricted to the same groups of species of fish and to a specified annual average quantity, embodied certain useful provisions that would curb overfishing. Besides, some guidance was provided by the international fishery agreements which stipulated a licensing system in certain cases. The licensing method would be useful in that it would help in the estimation of the average catch of fish over a specified period. Lastly, it should be laid down as a further condition that foreign fishermen would not be allowed to fish except in the customary zone.

7. With regard to the problem of enforcement, which under the United States proposal (article 4) would be the responsibility of the foreign State, he said that it was of course desirable that the fishing State should enact regulations which would ensure that its fishing vessels complied strictly with the provisions to be adopted by the Conference, and that it should notify such measures to the coastal State. There was no doubt, however, that the coastal State was in a better position to supervise the implementation both of the provisions of whatever convention was adopted and of the regulations of municipal law. Breaches of those provisions and regulations would not, of course, be within the jurisdiction of the coastal State; any fishermen guilty of such breaches would, together with their vessels, be handed over to the authorities of the State of which they were nationals. Such a division of powers seemed sufficient to avoid any conflict of jurisdiction. For the settlement of disputes a joint commission might be set up by the coastal and the foreign States, and any disputes not settled by that commission might be referred to arbitration.

8. Mr. SUBARDJO (Indonesia) said that the proposals before the Committee and the various arguments could be classified into two main groups, those advocating a uniform limit for the territorial sea and those in favour of a flexible formula. The Indonesian delegation was convinced that a uniform limit would offer no realistic solution. It was essential to try to find a formula which took into account all the factors involved. The many geographical differences in the configuration of States and important biological, economic and political considerations must be weighed in determining the breadth of the territorial sea. At the 8th meeting the Brazilian representative had rightly said that no two seas were alike; that geographical diversity might be regarded as a curse or as a blessing, but it was an inescapable fact. Attempts to set a uniform limit, such as those embodied in the proposals submitted by Canada (A/CONF.19/C.1/L.4) and the United States (A/CONF.19/C.1/L.3), were therefore unrealistic, particularly since the limit they proposed was less than that adopted by a large number of States. Accordingly, the adoption of a uniform limit of six miles would be tantamount to imposing a rule at variance with the principle of sovereignty, equality and mutual respect in international relations and international law. The Conference should adopt a formula entitling the State to fix the breadth of the territorial sea up to a certain maximum limit.

9. His Government had enacted legislation fixing the breadth of Indonesia's territorial sea at twelve miles. With a view to contributing to a compromise his delegation would, however, support any proposal that would entitle a State to fix the breadth of the territorial sea between three and twelve miles. A number of States having a limit of less than twelve miles might, even though given the opportunity of extending their territorial seas to that limit, nevertheless decline to do so.

10. The main objection to the three-to-twelve-mile formula was that it carried with it the possibility of discrimination against States which decided not to extend their territorial seas to the maximum limit vis-

à-vis those which availed themselves of that opportunity. The Indonesian delegation considered that the objection might be met by a provision drafted in the following terms:

> " If a State has fixed the breadth of its territorial sea and its contiguous fishing zone at less than twelve miles it is entitled vis-à-vis any other State to exercise the same sovereign rights or exclusive fishing rights beyond its fixed limits up to the limits fixed by that other State concerned."

In that connexion, he recalled the Mexican representative's reference at the 10th meeting to thirteen bilateral treaties under which Mexico and other countries had reciprocally recognized territorial seas up to a limit of nine miles or twenty kilometres; thus, there were many precedents for the settlement of the question on the basis of reciprocity. Under his delegation's suggested provision, no State would need to sacrifice its own ideas, but would be entitled to apply reciprocity whenever it wished to do so. The three-to-twelve-mile formula as supplemented by such a provision would, he thought, provide the most realistic and equitable solution.

11. In conclusion, he said that any agreement reached on the question of territorial waters should pay due regard to such exceptional situations as that mentioned by the Philippine representative concerning his country's position as an archipelagic State. Although the status of archipelagos forming geographical and historical units was said not to have found general recognition in international law as yet, the matter could no longer be ignored, since some countries had already implemented the archipelagic principle in their municipal law.

12. Mr. MELO LECAROS (Chile) said that the Chilean position had been stated very fully at the eleventh session of the General Assembly and at the first United Nations Conference on the Law of the Sea. Chile had always based its policies on the idea that the defined rule of international law was the only solid basis which could safeguard the future of the smaller countries. Such countries wished to know exactly where they stood and to be fully aware of their rights and obligations, because only so could they have some faith in the future and promote their economic, social, political and cultural development accordingly. As an earnest of that attitude he might mention the signature, on 19 March 1960, of agreements between Chile and Argentina by which among other things, the *Beagle* incident, which had been mentioned so frequently at the first Conference, was to be submitted to arbitration. A general system of automatic arbitration had been agreed on which, it was hoped, would remove all possibilities of dispute between the two countries in the future.

13. As the Chilean delegation had said in the past, the rise and development of the law of the sea had been prompted by one single factor: interest. Political or economic interest had always prevailed in defining the law of the sea through the centuries. Grotius had not argued for the freedom of the seas simply as an intellectual concept, but to defend the interests of the Dutch East Indies Company. Selden's sole aim in refuting Grotius had been to defend England's interests.

14. Things had changed very greatly since that time. The rule of law had been extended, but it was impossible to overlook the fact that the reason for the existence of law was interest. Law had been created by man for the use of man. Hence, it was impossible to make a law of the sea without considering the interests that such legislation must defend. The present Conference, unlike the 1930 Conference at The Hague, had not been asked to codify generally accepted rules, but to legislate. That was clear from General Assembly resolution 1105 (XI) convening the first United Nations Conference on the Law of the Sea. It did not mention codification, but an examination of the law of the sea, taking account not only of the legal but also of the technical, biological, economic and political aspects of the problem. Consequently, the second Conference, as a continuation of the first, was empowered to draft a rule of law; not a rule which fitted a given historical background, but one which suited the interests to be protected. In other words, it was to be a rule for the future, which should logically be a compromise formula, taking account of each country's legitimate aspirations regarding the seas, and one which would command sufficient assent to constitute a principle of international law.

15. The Conference should not consider any results it achieved as irreversible. No branch of law had developed more rapidly in the past few years than the law of the sea. In the past fifteen years completely new concepts had been consolidated, such as that of the continental shelf. Rules for the conservation of the natural resources of the seas had been worked out, and recognition had been given not only to the special interest of coastal States in conservation measures but also to the right of such States to adopt such measures unilaterally. That development was still continuing. Hence, references had been included in the 1958 Conventions to requests for amendment. That stipulation might not be adequate, since it implied that the conventions would be in force. If, however, a convention did not come into force or failed to obtain enough signatures or ratifications within a reasonable time, there could be no amendment procedure, despite the fact that a lack of interest in the convention was obvious and consequently that it should be amended. A procedure for the revision of such instruments should be established if they did not receive sufficient ratifications or became inoperative. He was not proposing another conference on the law of the sea. Whether the present Conference succeeded or failed in its efforts to reach agreement, several years should elapse before a new effort was made, but, in any case, efforts should be continued to obtain the signature and ratification of any agreement that might be concluded at the present Conference and of the Conventions concluded in 1958, and an analysis should be made of the reasons why some States were reluctant to become parties. That work might be carried on systematically and might be entrusted to the United Nations Secretariat, which should report in due course to the General Assembly or directly to the Governments.

16. The concept of the territorial sea had arisen as a rule for defence against pirates, epidemics and smuggling, and to protect fishing. The pirates no longer scourged the coasts. Epidemics and smuggling were covered by the concept of the contiguous zone. Fishing excepted, the factors which had originated the territorial sea had disappeared, but the principle had been preserved as a

traditional legal concept applicable to areas adjacent to the coast.

17. There were two aspects of fishing: the conservation of the natural resources of the seas and fishery limits proper. With regard to conservation, the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas, although not completely satisfactory, had been a great step forward. Only the future could tell whether the Convention was adequate and really served the purposes for which it had been concluded, or whether it might have to be amended. There had remained pending, therefore, a problem closely related to the breadth of the territorial sea, that of fishery limits, which might be either an area for exclusive fishing, an area in which there were preferential fishing rights or an area where fishing was regulated and controlled. If that problem could be solved constructively and realistically, it should not be too difficult to reach agreement on the breadth of the territorial sea.

18. It was, therefore, hard to accept the idea that the agenda of the present Conference comprised two items, the territorial sea and fishery limits, since they were in fact two aspects of a single problem. They were so closely interrelated that it was virtually impossible to separate them; both must be solved together. No agreement could be reached on the breadth of the territorial sea if the problems which States were seeking to solve by extending their territorial sea were not solved by other principles of international law. It was by reason of that consideration that he had proposed during the meetings of the experts who had prepared the first Conference that a special commission be set up to deal with the problem of the conservation of the living resources of the sea, on the grounds that fishery limits were in fact a part of the question of the territorial sea. That view had been confirmed by the first Conference and by the very wording of the agenda of the present Conference. There might well be no difficulties in obtaining agreement on a narrow territorial sea if sufficient understanding was shown for the problems of fishing, which were the greatest concern of the majority of the countries represented at the Conference. He had purposely omitted to refer to other more political aspects, to which Chile could not be indifferent, but which should be mainly the concern of the countries most directly affected; nevertheless, the Conference should adopt a liberal attitude towards the legitimate aspirations of countries which did not wish their maritime resources to be diminished by foreign fishing fleets that brought them no benefit.

19. None of the proposals before the Committee entirely satisfied the Chilean delegation, which was not particularly concerned with the breadth of the territorial sea but was very much interested in fishery limits. That had been the basis of the agreements concluded in 1952 with Ecuador and Peru which had led to the establishment of the Standing Committee of the Conference for the Exploitation and Conservation of the Maritime Resources of the South Pacific,[1] with its precisely defined aims of conserving and protecting natural resources for the benefit of the countries concerned. At the 7th meeting the Peruvian representative had referred at length to that subject and had described the exceptional position of his country, which was, on the whole, similar to that of all the Latin American countries on the South Pacific. That argument had been reinforced by the views expressed by the Brazilian representative, who had emphasized the diversity of the seas. Thus, while there would be no particular difficulty in fixing a uniform limit for the breadth of the territorial sea, exceptional situations would have to be recognized so far as fishery limits were concerned. The concept of exceptional situations might seem strange, but from the very beginning of the present Conference there had been talk of historic rights, which certainly implied exceptional situations. The only difference was that historic rights were derived from a historical assumption, because to talk of a history of five years, as the United States proposal did, meant very little, whereas rights deriving from an exceptional situation were grounded on something solid — geography.

20. The Chilean delegation certainly wished the Conference success, but it did not want a success based on a vote influenced by adventitious circumstances, but a success based on the acceptance of equitable and well-grounded rules.

The meeting rose at 4.25 p.m.

[1] See *Laws and Regulations on the Regime of the Territorial Sea* (United Nations publication, Sales No.: 1957.V.2), pp. 723 ff.

FIFTEENTH MEETING

Tuesday, 5 April 1960, at 11 a.m.

Chairman: Mr. José A. CORREA (Ecuador)

Consideration of the questions of the breadth of the territorial sea and fishery limits in accordance with resolution 1307 (XIII) adopted by the General Assembly on 10 December 1958 *(continued)*

GENERAL DEBATE *(continued)*

Statements by Mr. Quentin-Baxter (New Zealand) and Sir Claude Corea (Ceylon)

1. Mr. QUENTIN-BAXTER (New Zealand) had been encouraged to note the growing understanding of the diversity of interests at stake, and a greater flexibility of approach, which augured well for a final settlement. There had been a definite tendency to look beyond rival proposals in the search for a compromise.

2. New Zealand was one of the Pacific countries that was comparatively isolated, being 1,300 miles from its nearest neighbour, Australia. Foreign fishermen did not come to fish in its waters, nor did New Zealanders undertake distant-water fishing. Accordingly, his country's problems were relatively uncomplicated compared to those of many represented at the Conference, but he had listened with careful attention to the views of Governments with special interests.

3. Like other countries in process of economic expansion, New Zealand largely depended on seaborne traffic and