Second United Nations Conference on the Law of the Sea

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Fifteenth 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)*

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

was therefore particularly anxious to see the sea lanes kept clear. At present it did not possess a large merchant navy, but in the natural course of development would probably acquire a greater share in world shipping. That would neither bring it into conflict with other countries nor lessen its own concern that the freedom of the high seas should remain inviolate.

4. His country's position was analagous to that of the average coastal State. Perhaps its coastal waters were richer than some, but not so productive as to attract foreign fishermen from far away. New Zealand would benefit from a rule extending the exclusive rights of coastal States that would not be detrimental to any other country. Greater regard for the coastal State's interest in its coastal waters must be an essential feature of any final solution. However, being extremely anxious that the present Conference should reach a general agreement, his Government was aware that some sacrifice would have to be made by subordinating national interests to the common good, just as had been done at the Conference on Antarctica. It would be impossible to ensure that the sacrifices fell equally on all countries, but the balance must not be tipped on any one side.

5. In considering the law of outer space, the United Nations was concerned to establish a concept of common property, rather than individual rights. It would be a contradictory trend if the Conference on the Law of the Sea unduly enlarged the rights of individual States against the common domain. Despite the attempt to represent the concept of the freedom of the high seas as a weapon forged by the maritime Powers against coastal States, there was now a large measure of agreement that the concept was compatible with the latter's interests. Certainly the only way of preventing the piecemeal erosion of the freedom of the high seas was the adoption of a uniform rule for the delimitation of the territorial sea and contiguous zone.

6. It would be partisan to interpret the proposals for a six-mile territorial sea, which was double the minimum distance referred to by the International Law Commission, as a partial victory in a struggle to extend the limit up to twelve miles or beyond. Compromise was necessary if the narrow path to agreement was to be found, and proposals for a twelve-mile limit offered no real compromise. The supporters of twelve-mile proposals had sought to surround them with an aura of reasonableness, by using as a springboard the International Law Commission's statement that international law does not permit an extension of the territorial sea beyond twelve miles. That was a distortion of one of the guiding principles the Conference should follow, since it could by no means be concluded from that statement that international law conferred upon States an established right unilaterally to delimit their territorial sea up to twelve miles.

7. It was difficult to assess the force of the argument that a twelve-mile limit was necessary for defence purposes. Though it was not easy to deny any State the right to take reasonable measures for its defence, any such claim must be scrutinized most carefully, not in the light of the outmoded measure of the cannon's range but in the context of the discussions on disarmament at present going on in the United Nations. It was generally acknowledged that security depended on agreement between the great Powers and on the moral authority of the United Nations which was the foremost protection of small powers. It was illusory to imagine that a territorial sea, whether three, six or twelve miles wide, would provide a protective belt against the threat of force.

8. For those reasons, New Zealand saw no advantage for itself in having a wider territorial sea. But, recognizing the desires of other States, it believed that agreement was not possible on a limiting breadth of less than six miles. The greatest danger, however, particularly for the smaller States, lay in the absence of international agreement.

9. Referring the Conference to the last four sentences in paragraph 4 of the International Law Commission's commentary on article 3 in its draft articles concerning the territorial sea,[1] he said that if a coastal State unilaterally fixed the breadth of its territorial sea within the range of three to twelve miles and another State with substantial interests in the belt of water concerned contested such a delimitation, there was at present no way in law of adjudicating between the parties. That situation encouraged States to make gestures in order to preserve their rights and was as antiquated as trial by ordeal. The Conference's primary task must therefore be to find a general rule that would close such a gap in the law.

10. Some States favouring a twelve-mile limit were prompted by economic rather than by other motives, and it was encouraging to note that a considerable number among them admitted that analogous benefits would accrue from the six-plus-six formula, and seemed willing to vote for a solution that had a chance of securing the necessary two-thirds majority.

11. The Canadian proposal submitted to the first United Nations Conference on the Law of the Sea,[2] embodying the new concept of an exclusive fishing zone, had immediately found supporters because it had satisfied many of the demands of coastal States without prejudicing the essential rights of navigation. Those same elements of an acceptable compromise were to be found in the present Canadian proposal (A/CONF.19/C.1/L.4). Many speakers who had preceded him had already dealt adequately with the difference between the right of innocent passage and the absolute and unconditional right of free navigation on the high seas. There was an even greater contrast between freedom of flight over the high seas and the limited contractual right of flight over the territorial sea, which was very complex because it was based on national security, aircraft safety and on mutual concessions by the contracting States.

12. Unlike the Canadian proposal, the United States text (A/CONF.19/C.1/L.3) gave some recognition to historic rights, which was essential if agreement was to be reached. The question was whether the sacrifice of historic rights would be a minor hardship which should be disregarded in framing a universal rule. It might be argued that, given the very diverse situations in different parts of the world, it was impossible to take account of

[1] *Official Records of the General Assembly, Eleventh Session, Supplement No. 9*, p. 13.

[2] *Official Records of the United Nations Conference on the Law of the Sea*, vol. III, annexes, document A/CONF.13/C.1/L.77/Rev.1.

every special case, and a simple general rule would therefore have to leave room for regional adjustment. He himself considered that historic rights could not be dismissed out of hand, and he welcomed the growing awareness of the difficulties that such rejection would create. The rights safeguarded in the United States proposal were not prescriptive or exclusive, or built up by one State asserting them against the international community as a whole or against the coastal State: they were rights to use the resources of the high seas enjoyed by all and exercised by some over a long period. The five-year period was a rough and ready test for distinguishing the substantial users, and no one had argued that such a test, which would ensure that the exclusive rights of coastal States would not be limited unless there was good precedent, would be unfair. It was misleading to argue that historic rights were invoked only by the great maritime Powers against weaker coastal States in the process of economic development. The matter must be regarded in its entirety from the point of view of whole communities and individuals who for many years had depended on distant-water fishing for their livelihood. In other words, the same considerations should apply as those advanced when help to under-developed countries was being discussed.

13. It should be emphasized that the United States proposal did not give full recognition to historic rights, the exercise of which would be subject to precise quantitative limitations. However, the formula was not perfect, and there was some force in the criticisms that it sought to establish certain rights in perpetuity for some States, and that the quantitative limitations would be difficult to apply. Perhaps some of those objections could be met by providing for the lapse of historic rights within a specified period, an idea that had already been mooted and should now be discussed in detail. With the co-operation and acquiescence of States claiming such historic rights, it should be possible to decide on the term and to be reasonably generous about it. It was not impossible to ascertain the way in which capital investment and the economic life of communities would be affected. In addition, some compensatory provision to meet cases of exceptional hardship to the coastal State might be needed. In most cases, however, it was unlikely that the fishing potential of coastal States would expand more quickly than the rate at which the present users would terminate their interests.

14. As the proposals stood, the New Zealand delegation would support only that of the United States because it was the only one containing all the ingredients essential to a final settlement, though there might be scope for some revision of the recipe provided all the ingredients remained.

15. Sir Claude COREA (Ceylon) recalled that, despite the seven sessions it had devoted to the law of the sea, the International Law Commission had been unable to arrive at agreed conclusions on the two questions of the breadth of the territorial sea and fishery limits. It was true that it had succeeded in drafting more than a hundred articles, dealing with many important aspects of the law of the sea, on the basis of which the first United Nations Conference on the Law of the Sea had drawn up four international instruments in 1958; but the final ratification and universal acceptance of those instruments depended on whether the present Conference succeeded in reaching agreement on the breadth of the territorial sea.

16. His delegation believed that the first Conference had been very near agreement on the delimitation of the territorial sea and on the allied problem of the fishing zone. That it had not then been possible to conclude an agreement had been largely due to lack of time, a circumstance itself due to the very lengthy debate between advocates and opponents of the three-mile rule.

17. The present Conference was called upon to take up the work thus suspended in 1958. The general situation was more propitious to agreement; international tension had slackened, and if the Conference succeeded in its task it would be making its own contribution to a further improvement in international relations. But, if it failed, States might be tempted to delimit their territorial sea unilaterally, and to resort to the use of force to assert their claims to exclusive fishing rights in their coastal waters.

18. An objective approach to the issues with which the Conference was faced could well start from the universally accepted principle of the freedom of the seas. That principle was not only recognized by international law, but was also in the interest of the entire community of nations. From the earliest days, however, it had been admitted that each coastal State was entitled to assert jurisdiction over a certain breadth of the sea adjacent to its coast for security purposes. But in trying to determine how far they were entitled to encroach on the high seas to that end, sovereign States had been unable to agree upon a truly common standard. The three-mile rule, which had at one time commanded wide acceptance, was now obsolete. Indeed, the very States which had most ardently advocated it at the beginning of the 1958 Conference had, in the later stages, expressed through their votes their willingness to abandon it in favour of the more realistic concept of a six-mile limit to the breadth of the territorial sea. It could therefore be safely concluded that as a rule of international law the three-mile limit was dead.

19. He recalled that at the first Conference his delegation had declined to support the three-mile limit, urging that it be modified to keep up with changing circumstances. His delegation had believed then, and still believed, that it would be dangerous not to define the breadth of the territorial sea by means of a rule of international law. Hence the present Conference must, if it was to success, achieve a compromise between the two extremes of a three-mile and a twelve-mile limit. His delegation at present supported, as it had in 1958, the approach which sought to confer recognition on a territorial sea six miles broad, in the belief that such a limit would be generally acceptable to the international community as a reasonable and equitable compromise.

20. State practice in the delimitation of the territorial sea was not uniform, and the Conference was therefore faced with the necessity of formulating a new rule of international law acceptable to as large a number of States as possible, and of embodying that rule in a convention. But no such rule could hope to be acceptable and readily ratifiable by Governments unless it was based

on a fair and reasonable solution to an admittedly difficult problem. One of the tests of reasonableness was the universally recognized democratic one of acceptance by the majority. Whatever views individual States might hold, it was to be hoped that the will of the majority would prevail and be respected.

21. The delegation of Ceylon was convinced that a reasonable extension of the breadth of the territorial sea would not seriously jeopardize the principle of the freedom of the high seas: there was a sufficient expanse of ocean for all to share. It was gratifying to note, in that connexion, the changed attitude of the great Powers as reflected by their recognition of the growing needs of the smaller countries, and by their agreement to an equitable extension of the breadth of the territorial sea.

22. In considering what the new limit should be, it was important not to lose sight of the fact that a twelve-mile jurisdiction was vitally important to the coastal State only in the matter of the utilization of the living resources of the coastal waters. The needs of national security were not seriously engaged. In the modern ballistic age, it made little difference to national defence whether the territorial sea was six or twelve miles broad. The only valid reasons of national security were those relating to such things as immigration control and customs control, which could be dealt with quite adequately without extending the territorial sea to twelve miles. It could also be argued that too great an extension of the territorial sea might well impair the security of the coastal State by involving it in conflicts arising out of its inability to protect its extended rights. The areas in which the right of innocent passage applied would also be enlarged, and with them the possibility of disputes. Lastly, undue extension of the territorial sea might result in the limitation of access to hundreds of thousands of square miles of the high seas which were at present open to use by all countries; such restriction in turn would lead to longer and less economical commercial runs, to increased shipping costs, to reduced revenue for producers and to higher prices for consumers.

23. For all those reasons, his delegation could not support the proposal that the breadth of the territorial sea be extended to twelve miles, although that proposal was not in itself unattractive, and although a twelve-mile limit had already been recognized by an appreciable number of States. His delegation's position was the same as at the first Conference: it favoured a territorial sea of six miles, a breadth that was recognized by the laws of Ceylon.

24. The difficult problem of fishery limits might, in his delegation's view, be solved by establishing a fishing zone separate from, but contiguous to the territorial sea. Apart from the exercise of exclusive jurisdiction over certain territorial seas adjacent to its coast for purposes of national security, a coastal State had certain rights in respect of the exploitation of fishery resources in an adjacent zone of the sea, to satisfy the growing needs of its people. His delegation was glad to note that those rights were receiving wider recognition, and the delegations which at the first Conference had subscribed to the Convention on the Continental Shelf that granted to coastal States sovereign rights over the exploration and exploitation of the natural resources of the sea-bed and subsoil off their coasts would surely recognize the right of such coastal States to control the living resources of their coastal waters — resources often of vital importance to their economy and to the livelihood and very existence of their people. The Conference must not allow small, weak and economically less-developed nations to be deprived at an ever-increasing rate of substantial portions of their economic resources for no other reason than that more powerful members of the international community were technically better equipped to harvest them.

25. His delegation felt that many States were advocating an extension of the territorial sea to twelve miles because of the understandable confusion which appeared to have arisen in recent years about the exact meaning of the term " territorial sea ". A clear distinction should be drawn between the territorial sea, which gave coastal States sovereign jurisdiction over security, immigration, customs, public-health and criminal matters, and an exclusive fishing zone, which would give those States the same control over coastal fishing as they would have if their territorial sea were twelve miles wide. Analysis would show that the coastal State could not hope to derive any greater economic benefit from the adoption of a twelve-mile territorial sea than from the adoption of a narrower territorial sea with an additional exclusive fishing zone. The latter seemed to be the only possible formula which would satisfy the majority of States represented at the Conference and that would lend itself to universal and uniform application. Such matters as the recognition of historic fishing rights, or adjustments between neighbouring States, would have to be taken into consideration in the search for an acceptable solution; they could not be disregarded in the hope that they could be dealt with later by bilateral or regional agreements. Ceylon therefore believed that the Conference should consider a reasonable limit for the territorial sea and, in establishing an additional fishing zone contiguous thereto, should seek to safeguard the interests of those countries which had engaged constantly in fishing in that zone for a considerable time past. But his delegation would keep an open mind and seek a common basis on which substantial agreement might be reached.

26. Turning to the several proposals before the Committee, he expressed the view that, although the Soviet Union proposal (A/CONF.19/C.1/L.1) was attractive in so far as it would entitle coastal States to adopt any breadth between three and twelve miles for their territorial sea, that very flexibility was its greatest weakness. It was the Conference's task to formulate a rule of international law that would be uniform, precise and acceptable to all; but the Soviet proposal was likely to engender uncertainty, since countries would be free to establish the breadth of their territorial sea over a wide range. It was true that the proposals of the United States (A/CONF.19/C.1/L.3) and Canada (A/CONF.19/C.1/L.4) were open to the same objection, inasmuch as they provided for a maximum limit of six miles, but the smaller range of variation was likely to give rise to correspondingly fewer difficulties. A further attraction of the Soviet Union proposal was that, wherever a territorial sea of twelve miles was accepted, there would be no need to consider a separate fishing zone.

27. The Mexican proposal (A/CONF.19/C.1/L.2) also laid down a twelve-mile limit for the territorial sea, but sought to encourage States to adopt a narrower breadth by providing for a compensatory fishing zone, the extent of which would vary in roughly inverse proportion to the breadth of territorial sea adopted. Again, the principal objection was that confusion might ensue if different States adopted different limits. Recalling that the Mexican representative had referred at the 10th meeting to a number of treaties concluded by his country with other States, including the United States of America and the United Kingdom, in which the limit of the territorial sea had been set at three marine leagues, he expressed the hope that the representatives of the two last-named countries would explain how they reconciled recognition of a territorial sea of nine miles in those bilateral treaties with their present contention that the maximum breadth of the territorial sea should not exceed six miles.

28. His delegation regarded the Canadian proposal as unrealistic, in that it failed to allow for rights enjoyed for many years by countries which had fished in the sea areas to be included in the additional six-mile zone adjacent to the six-mile territorial sea. It was neither just nor equitable that such rights should be summarily abolished. While it recognized that coastal States should generally be entitled to exclusive fishing rights in a substantial area of sea adjacent to their coasts, the delegation of Ceylon would hesitate to be party to any attempt to abolish prescriptive rights, which under most systems of law were recognized in other spheres as fair and equitable. It should be possible to reconcile the rights of coastal States with those of States which had fished for long periods in the areas concerned, through bilateral agreements regulating fishing practices and imposing limitations by quantity or species, or other mutually acceptable restrictions, as suggested in the United States proposal. The Canadian proposal might appropriately be amended by the inclusion of a clause providing for the negotiation of bilateral arrangements of that kind.

29. At the first Conference the delegation of Ceylon had supported the original United States proposal,[3] which had been a realistic and reasonable compromise between the rights of coastal States and the historic rights of other States. That proposal had come nearest to commanding the required two-thirds majority. It was to be regretted, therefore, that the United States Government had seen fit to amend that proposal and submit it to the present Conference in a form which sought to modify the rights of fishing States of long standing. The United States delegation had explained that it had yielded to adverse criticism of its original proposal, and made a further concession in its search for a satisfactory solution. Although the present proposal recognized the rights of fishing States, it sought to curtail them, and was therefore unacceptable to the delegation of Ceylon. The rights of coastal States and those of fishing States could be adjusted only through mutual understanding and bilateral agreement. Apart from being inequitable, such limitations as were suggested in the United States proposal would in practice be extremely difficult, if not impossible, to enforce, since it was unlikely that the statistics currently available differentiated between catches made within the twelve-mile zone and those made outside it.

30. The delegation of Ceylon believed that the special interest of a coastal State in the living resources of the sea could but rarely justify the complete exclusion from its coastal waters of fishing States which had exercised the right to operate in those waters for a long period. It had therefore been attracted to the Cuban representative's suggestion at the 2nd meeting that the conflicting interests might be reconciled on the basis of " preferential ", as opposed to " exclusive ", fishing rights for coastal States. Such a system might offer a practical solution with least harm to either group of States, and he hoped that the Cuban representative would embody his suggestion in a definite proposal. The Ceylonese delegation would carefully study all proposals and suggestions put to the Conference, and lend its weight to the common effort to reach a satisfactory solution.

The meeting rose at 12.40 p.m.

[3] *Ibid.*, vol. II, annexes, document A/CONF.13/L.29.

SIXTEENTH MEETING

Tuesday, 5 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. Rafael (Israel) and Mr. Lamani (Albania)

1. Mr. RAFAEL (Israel) said that the first important question before the Conference was how to reconcile the universal interest in the freedom of the seas, including the freedom to fly over them, with the desire of the coastal States to protect their sovereignty. The second was how to reconcile new, and not unjustified, demands for exclusive fishing rights in extended areas of what had been high seas with the existing fishing rights and practices of non-coastal States in those areas.

2. Israel's basic position on those questions had remained unchanged since the 1958 Conference and the thirteenth session of the General Assembly. The results of the 1958 Conference supported the belief that the remaining questions could be solved by the present Conference, which would thus be crowning the edifice of the law of the sea erected by generations of jurists and codified by a great joint international effort in the four Conventions of 1958. Those Conventions established the incontestable law of the sea by which every nation should abide.

3. The improvement of living conditions and the strengthening of its security were among the principal