Second United Nations Conference on the Law of the Sea

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Sixteenth Meeting of the Committee of the Whole

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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.

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

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.

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

concerns of Israel, one of the group of new States. Yet it did not believe that its security would be increased merely by an extension of the territorial sea. The larger the security area, the greater and the more costly were the means required to protect it, and if the extended area of territorial sea was not adequately protected, the risks of foreign interference were correspondingly greater, especially in times of stress and emergency.

4. Freedom of navigation and international intercourse, the unhampered flow of commerce, and the increasingly pressing requirements of civilian air traffic all spoke strongly in favour of leaving the greatest possible area of the world's seas open and subject to the concept of the freedom of the seas. The extension of national sovereignty over areas which had been part of the high seas would abolish rights previously universally enjoyed and create new problems, frictions and disputes. The clearly discernible trend of the world was towards increased international co-operation. It would be anachronistic to reduce the sea and air space which had been open to all peoples and nations.

5. Israel had a natural and direct interest in all maritime matters owing to its geographical position. The Government had been devoting special attention to the revival of maritime activities; from negligible beginnings, a merchant marine fleet exceeding 250,000 tons had been built up, and further increases were planned. Much effort had been invested in the development of the fishing fleet and industry.

6. The national airlines operated a far-flung network of air services, and many foreign airlines were also operating into Israel. All that traffic passed over large expanses of sea. Any extension of the territorial sea would seriously harm air communications and might even endanger the safety of air travel. He drew attention to article 6 of the 1944 Convention on International Civil Aviation, which stated that no scheduled international air service might be operated over or into the territory of a contracting State, except with the special permission of that State. That article should be read in conjunction with the stipulation in article 2 of the 1958 Convention on the Territorial Sea and the Contiguous Zone that the sovereignty of the coastal State extended to the airspace over the territorial sea.

7. So far as fishery limits were concerned, he said it was recognized that conservation was a matter of common concern and overriding interest to all countries, both those which caught fish and those which only consumed it. Israel believed that properly co-ordinated conservation measures should be applied whenever necessary, whether in the high seas or in the territorial sea. It participated in the Conseil Général des Pêches pour la Méditerranée, one of a number of fishing councils which co-ordinated the necessary scientific research and stimulated both the productivity of the fishing industry and the necessary conservation measures.

8. While reserving its position in respect of the areas in which Israel's fishermen were operating, his delegation was impressed by the concern of many States in stronger measures to protect their own coastal fishing. Many of the new States, particularly in Africa, depended on the coastal sea for their supply of animal protein, and it should be clearly recognized that those countries should have unimpeded and uncontested opportunities to develop fully their fishing activities in their adjacent seas. Israel therefore accepted the principle of the contiguous fishing zone in which the interests of the coastal State should prevail. There were, on the other hand, many countries which engaged in coastal fishing, not because rich fishing grounds were located near their coasts, but simply because they lacked the equipment, technical knowledge and experience for distant-water fishing. That had been Israel's case, too, but thanks to the increased possibilities of acquiring modern equipment, of training crews, of co-operating with experienced fishing countries, and to the progress made in the techniques of refrigeration and marketing, the fishermen of Israel were now able to venture to more distant waters. There was every reason to hope that in the future important progress in that branch of economic activity would be recorded, and Israel was already in a position to share its experience with some of the new States.

9. He proposed, therefore, that the Conference should not content itself with the definition and protection of rights and interests, but that it should recommend the more advanced fishing countries to grant technical, financial and other assistance to the States wishing to develop a modern fishing industry. Such a scheme of technical assistance, apart from providing tangible evidence of international solidarity, would, he thought, actually contribute to the settlement of competing claims to fishing rights. The countries anxious to protect themselves against encroachments would be able and willing, once they possessed modern equipment and the capacity to use it, to engage in more profitable forms of fishing, and the greater equality in facilities and equipment should make it easier to reconcile conflicting interests. He hoped the idea of technical assistance would commend itself to the Conference and find appropriate expression in its work.

10. It was widely recognized that any abrupt termination of existing and traditional fishing practices in coastal waters would cause considerable hardship and injury, and would affect great numbers of hardworking fisherfolk whose livelihood depended on distant-water fishing. Those maritime countries whose coastal waters did not yield abundant supplies of suitable fish, and whose fishermen had for centuries been fishing in distant waters, had acquired costly equipment for that kind of fishing, sometimes only recently. Those interests also demanded due recognition in any genuine compromise. If any extension of an exclusive fishing zone were to be accepted, there should in all fairness be a transition period during which necessary adjustments could be made. Such a period would also provide the opportunity for the negotiation of bilateral or multilateral agreements to take the place of the existing practices.

11. Israel wanted the Conference to reach agreement, and that could not be achieved by one-sided concessions. A true compromise should take into account not only the various conceptions of fishing rights but also, and equally, the requirements of free navigation on the sea and in the air and the legitimate preoccupations of the coastal States. Israel was in favour of the fullest measure of freedom of navigation, and that freedom would be impaired by any undue extension of the territorial sea or any other restrictive measures changing

established rules and practices. It favoured a maximum limit of six nautical miles for the territorial sea. It also accepted, in principle, the establishment of an additional fishing zone not exceeding a further six miles, provided that it was accompanied by suitable provisions to avoid undue harm to existing rights and to allow sufficient time for the completion of the necessary supplementary bilateral or multilateral agreements.

12. With regard to the question of exceptional situations, such as that of Iceland, he said the general trend of opinion in the Conference seemed to indicate that most of the legitimate anxieties and requirements in that connexion could be satisfied. However, since any formula which the Conference might finally adopt would be of a general nature and would not be designed to cover in detail every particular contingency, Israel believed that the Conference should explicitly recognize the existence of exceptional situations.

13. Mr. LAMANI (Albania) said that the exchanges of views in 1958, even if they had not yielded concrete results, had at least cleared the way. The attempt made by certain countries at that time to impose the alleged three-mile rule had failed. Nor had the supporters of the three-mile rule succeeded in securing acceptance of the six-mile limit, which they had represented as a compromise, whereas it had been in fact an attempt by the colonial Powers to preserve privileges previously acquired at the expense of defenceless peoples. In 1958, and again in 1960, a large number of States had expressed their preference for a territorial sea extending to a twelve-mile line. The International Law Commission had stated that international practice was not uniform and had expressed the view that international law did not permit an extension of the territorial sea beyond twelve miles; [1] the inference to be drawn from that conclusion was that every State was entitled to claim up to twelve miles without thereby violating international law. Moreover, the synoptical table prepared by the Secretariat (A/CONF.19/4) showed that, apart from a few exceptions, States had adopted limits not exceeding twelve miles. The conclusion of the International Law Commission was, accordingly, well on the way to becoming a general rule. That was why the Soviet Union proposal (A/CONF.19/C.1/L.1), which was very flexible, offered the most satisfactory formula and had the best chance of being adopted by the Conference.

14. In Albania's case the limit that would best safeguard the security of the State was that of twelve miles; it had often happened that maritime Powers had carried out demonstrations of force off the shores of a weaker country, in order to intimidate it. The twelve-mile limit would help to remove certain misunderstandings and to improve the international atmosphere. He did not agree with the argument that the twelve-mile limit would impair the freedom of the seas; innocent passage through the territorial sea was a generally accepted practice which was expressly recognized in the 1958 Convention on the Territorial Sea and the Contiguous Zone.

15. The countries which were so zealous in defending the freedom of the high seas were precisely those which undermined that freedom by building radar stations far out at sea for the ostensible purpose of international security. In that connexion he cited a passage from a book by Mr. Olivier de Ferron,[2] which mentioned that at the 1958 Conference certain encroachments on the high seas had been overlooked; namely, the construction by the United States of America of a chain of radar towers called " Texas towers ", at a distance of 150 miles from that country's coast. Built on floating platforms, those towers were anchored to the sea-bed and constituted so many encroachments on the high seas, with the consequence that large areas were in effect brought under the sovereignty of the coastal State, in breach of international law.

16. By a decree of 4 September 1952, Albania had fixed the breadth of its territorial sea at ten miles. One-third of Albania's frontier ran along the coast, and the coastal waters were rich in fish. Since its liberation, Albania had created a new fishing industry and established a number of canneries, which contributed materially to the strengthening of the national economy. Its example disproved the assertion that small countries could not exploit their resources themselves. In some quarters it was desired to perpetuate the humiliating position of the small countries; but the liberation of the peoples was proceeding, and the process could not be reversed. The young nations wanted to make use of their resources themselves; they should be given the opportunity to do so, all peoples should be treated as equals, and the rights of others should be respected. That was the realistic spirit in which the Conference should approach the problems before it; the practice that had grown up should be adopted as the rule of law.

The meeting rose at 4 p.m.

SEVENTEENTH MEETING

Wednesday, 6 April 1960, at 10.30 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. Hassan (United Arab Republic), Mr. Sohn (Republic of Korea), Mr. Matine-Daftary (Iran), Mr. Elizondo (Costa Rica) and Mr. Povetiev (Byelorussian Soviet Socialist Republic)

1. Mr. HASSAN (United Arab Republic) said that, while it was generally recognized that the first United Nations Conference on the Law of the Sea had been most successful, that Conference had none the less failed to reach agreement on the questions of the breadth of the territorial sea and fishery limits, largely because

[1] *Official Records of the Genera Assembly, Eleventh Session, Supplement No. 9*, p. 4.

[2] *Le droit international de la mer* (Geneva, Librairie E. Droz, 1958), vol. I, p. 157.