Second United Nations Conference on the Law of the Sea

Geneva, Switzerland
17 March – 26 April 1960

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Eighteenth 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)*

33. At the Committee's 4th meeting, the United States representative had expressed his Government's preference for a three-mile limit, which in the United States' view would serve the interests of all countries. In explaining the United States Government's opposition to a twelve-mile limit, Mr. Dean had indicated that such a limit would allegedly be contrary to the interests of the majority, would hinder navigation, would cause serious incidents in international straits, would affect established sea routes passing through zones contiguous to territorial seas, and would cause anchorage difficulties. The Byelorussian delegation associated itself with the pertinent criticisms levelled against those factitious arguments, especially by the representatives of Poland and Yugoslavia.

34. Mr. Dean's statement on 20 January 1960 before the Senate Foreign Relations Committee shed some light on the real motives underlying the United States proposal. Referring to the preparations for the present Conference, Mr. Dean had said:

> "Our navy would like to see as narrow a territorial sea as possible in order to preserve the maximum possibility of deployment, transit and manoeuvrability on and over the high seas, free from the jurisdictional control of individual States."

Mr. Dean himself had supplied the answer why the United States Navy stood in such need when he had gone on to say:

> "The primary danger to the continuance of the ability of our warships and supporting aircraft to move, unhampered, to wherever they may be needed to support American foreign policy presents itself in the great international straits of the world — the narrows which lie athwart the sea routes which connect us with our widely scattered friends and allies and admit us to the strategic materials we do not ourselves possess."

Thus Mr. Dean had discussed the position of international straits in definitely strategic terms. He had worked out that a twelve-mile limit would result in 116 of the major international straits coming under the sovereignty of coastal States, whereas with a six-mile limit only 52 would be so affected. Mr. Dean had gone even further in stating that with a six-mile limit probably only 11 States would claim the right to terminate or interfere with the transit of United States warships or military aircraft, and had concluded that although this would "present a defence capability impairment, that impairment is believed to be within tolerable operating limits".

35. Such were the fundamental motives of the so-called United States compromise proposal, and the considerations he had quoted — which had possibly not been intended for discussion at the present Conference — explained the determined refusal of the United States Government to accept a twelve-mile limit. Although in the Committee Mr. Dean had given entirely different reasons for his proposal, there was no reason to doubt the authenticity of the case he had put to the Senate Committee.

36. It should be added that United States naval forces were at present stationed far from their home waters. For example, the Sixth Fleet was in the Mediterranean, the Seventh Fleet off the coasts of the Chinese People's Republic, and the Fifth Fleet was assembling in the Indian Ocean — all of which proved that the United States Navy had been transformed into the instrument of a definite foreign policy.

37. It was hardly necessary to adduce further evidence to show that the United States' position with regard to the territorial sea had nothing to do with the progressive development of international law and with the purposes and principles of the United Nations Charter.

38. He reiterated his conviction that the problems before the Conference could be solved on the basis of the Soviet Union proposal, which constituted the only viable and realistic compromise. It was consistent with state practice, was, of general applicability and met the varied interests of all States. It would require neither substantial sacrifices on the part of any country nor a fundamental departure from national legislation in force. Adoption of the USSR proposal would be a positive contribution to the codification of the law of the sea, and would thus promote peaceful international co-operation.

39. The Conference could succeed only by reaching unanimous agreement on the breadth of the territorial sea, since without unanimity any agreement would remain a dead letter. The special feature of rules of international law regulating the relations between sovereign States was that they were created by agreement between States, and possessed legal force only by virtue of assent. Unfortunately, it was becoming apparent that participants in the Conference held opposing views about the breadth of the territorial sea, and that — as certain delegations had maintained at the thirteenth session of the General Assembly — the time was not yet ripe for devising a generally acceptable formula. If that was so, it might be wiser to wait until the question of the breadth of the territorial sea was really ready for codification.

The meeting rose at 12.15 p.m.

EIGHTEENTH MEETING

Wednesday, 6 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. Nisot (Belgium), Mr. Diallo (Guinea), Ato Goytom Petros (Ethiopia), Mr. Ponce y Carbo (Ecuador) and Mr. Liu (China)

1. Mr. NISOT (Belgium) said that the sea was *res communis*, an asset shared in common by all States on a footing of full equality. That was the view confirmed

by the International Court of Justice in its decision in the Anglo-Norwegian Fisheries case of 1951. The Court had stated:

> " Although it is true that the act of delimitation is necessarily a unilateral act, because only the coastal State is competent to undertake it, the validity of the delimitation with regard to other States depends upon international law." [1]

It followed that States had no discretionary power to determine the extent of their territorial sea, nor to determine that of exclusive fishing zones outside territorial waters.

2. Belgium was primarily interested in the question of fishing, its position in that regard being very special. Its coastline was only 67 km long, and the waters neighbouring that coast were poor in fish. The Belgian industry consisted of small independent coastal fishermen who operated at no great distance from their home ports and who relied on the fish supplies in the waters off the shores of the North Sea coastal States. For that reason, his Government could not support proposals which would have the effect of extending the breadth of the exclusive fishing zone to twelve miles, whether the zone was declared territorial waters or a so-called contiguous zone. For Belgium, the acceptance of such a formula, unqualified by limitations guaranteeing the substance of the prerogatives enjoyed by Belgian fishermen, would spell ruin for its ancient fishing industry. His delegation was still hoping that the Conference would be able to work out a compromise that made allowance for that very special position.

3. Mr. DIALLO (Guinea) said that his country had not taken part in the 1958 Conference because it had at that time still been a colonial territory. When Guinea had become independent, the Government had contemplated delimiting its territorial sea unilaterally, in accordance with custom, but realizing that an international conference was being convened to attempt to solve the problem it had deferred its decision.

4. Taking into account the interests both of the international community and of the peoples for which his Government was responsible, his Government favoured a total breadth of twelve miles, embracing both the territorial sea and the contiguous zone, on the understanding that the determination of the respective breadths of the territorial sea and the contiguous zone, within that aggregate breadth of twelve miles, would be left to the discretion of the coastal State. That formula had the advantages of being reasonable, of not jeopardizing the freedom of the high seas, of safeguarding the interests of the coastal State, of being realistic in that it reflected international practice, and of allowing each State to be the sole judge of its interests within the limits so defined.

5. Some speakers had said that a formula allowing the State latitude to fix the breadth at a limit between three and twelve miles would create anarchy and if accepted by the Conference, that anarchy would receive the blessing of the law. Actually, the anarchy already existed, but if the point of view upheld by his country were adopted, the anarchical situation would be confined within well-defined limits and, as a result, be considerably diminished. The discussions had convinced him that a uniform rule would have little chance of prevailing, and that if the Conference were to succeed it could only do so on the basis of a compromise such as the twelve-mile formula.

6. With regard to " historic rights ", he said that the concept was nothing other than a manifestation of the right of the strongest and a vestige of colonialism, which it would oppose in all its forms. To perpetuate those rights would be a grave injustice to the young States that were struggling not only for political but also for economic independence.

7. Ato Goytom PETROS (Ethiopia) said that Ethiopia had not participated in the 1958 Conference, but the Government had sent the Secretary-General a brief comment [2] on the draft prepared by the International Law Commission. The present Conference's work on determining the breadth of the territorial sea and fishery limits was necessary because the Convention on the Territorial Sea and the Contiguous Zone of 1958 would be incomplete otherwise, and without such further work the 1958 Convention on the High Seas would be juridically absurd.

8. The Ethiopian delegation certainly held definite views on the breadth of the territorial sea and fishery limits, but it had not disregarded the opinions expressed in the Committee and in informal discussion. It had thought that a uniform definition of the breadth of the territorial sea could not satisfy all States, especially as their needs might often conflict. Each State, or group of States, had to safeguard its own political and economic interests and national security. Furthermore, those interests and security did not remain constant, but were always changing. That fact should be borne in mind in considering the proposals submitted by the United States (A/CONF.19/C.1/L.3) and Canada (A/CONF.19/C.1/L.4), which were alike, except that the United States proposal raised the question of historic fishing rights. Both proposals implied the right of every State to fix a maximum breadth of six miles for its territorial sea. It had been stated that that formula would apply invariably to all States in all circumstances; in his delegation's opinion, however, such a rule would conflict with customary practice and with reality. It was not flexible enough and did not leave each State free to determine the breadth of its territorial sea in accordance with its legitimate interests. The two proposals recognized only the interests of States which had established the breadth of their territorial sea up to a maximum limit of six miles, but totally disregarded the interests of States which had fixed it between six and twelve miles as, for example, Mexico had done.

9. The proponents of the six-mile limit argued that their formula was a compromise solution. Certainly the Conference's success depended on compromise, but any compromise that failed to take into account the legitimate interests of all States was not a real compromise, nor was it fair or equitable.

10. The proposal originally submitted by eight Powers at the 1958 Conference [3] had been revived in the proposals of the Soviet Union (A/CONF.19/C.1/L.1) and Mexico (A/CONF.19/C.1/L.2), which were alike, except that

[1] *I.C.J. Reports 1951*, p. 132.

[2] *Official Records of the United Nations Conference on the Law of the Sea*, vol. I, document A/CONF.13/5 and Add.1 to 4, sect. 20.

[3] *Ibid.*, vol. II, annexes, document A/CONF.13/L.34.

under the Mexican proposal the fishery limits would vary with the breadth chosen for the territorial sea. Both proposals implied the right of every State to fix the breadth of its territorial sea up to a limit of twelve nautical miles. That formula in effect affirmed a general principle established by custom. Those proposals were flexible enough and would allow every State to determine the breadth of its territorial sea in keeping with its legitimate interests.

11. Ethiopia had established, by a law enacted in 1953, a breadth of twelve nautical miles for its territorial waters, not merely because that breadth had been fashionable at the time nor simply in order to bring a vast tract of sea under its sovereign jurisdiction, but because the country's economic interests and security required that breadth. Difficulties should not be placed in the way of other States which had fixed the breadth of their territorial sea at six miles and whose future interests might require them to increase that breadth. The formula in the Mexican and Soviet Union proposals was a sensible one, because it reflected general custom and did not infringe any principle of international law. It had been said that the International Law Commission had never ruled that international law authorized the establishment of a twelve-mile limit; but that was no valid argument, because neither had it stated that the twelve-mile limit would infringe international law.

12. Certain States had voiced the fear that the right to a breadth of twelve miles would mean that shipping lanes between the coasts of two or more States would be enclosed within territorial waters and so be barred to free navigation. Surely, however, the same would happen if a six-mile limit were adopted. In the straits of Gibraltar, Bab el Mandeb and Surigao the high seas channel would not be free even under the six-mile rule. The problem could be solved only by establishing high seas channels through straits of international interest which might be within the territorial waters of two or more coastal States. Actually, he thought that article 16, paragraph 4, of the 1958 Convention on the Territorial Sea and the Contiguous Zone would afford ample protection for innocent passage through such straits. In order to allay the fears expressed, the Ethiopian delegation would consider favourably any proposal embodying the idea that two or more States the coasts of which were opposite each other would be debarred from enclosing in their territorial sea international straits which had in the past been used freely as high seas navigational routes, and that in all such cases the States concerned would fix the limits of their territorial sea in such a way that the high seas channels were broad enough to permit free navigation.

13. The Ethiopian delegation was also in favour of a twelve-mile zone for fishery limits. For many countries the coastal waters were the main source of livelihood, and even for countries which had not yet exploited them they represented a future source of prosperity. The coastal State undoubtedly had greater legitimate rights over the waters adjacent to its territory than did any other State. The United States proposal raised the idea of historic fishing rights in a six-mile belt contiguous to the territorial waters of the coastal State. That formula would create more problems than it claimed to solve. Its adoption would increase international tension, give rise to insuperable administrative problems, and would grant to a few States a perpetual privilege.

14. The Canadian proposal on fishery limits would undoubtedly create difficulties for thousands of persons and for fishing industries that depended on deep-sea fishing. Those problems could best be solved by concluding bilateral or multilateral agreements. The Ethiopian delegation would give a cordial hearing to any proposal designed to mitigate such difficulties, but would maintain its view that the most acceptable solution would be a fishing zone of twelve miles in which no State other than the coastal State would enjoy fishing rights.

15. Mr. PONCE Y CARBO (Eduador) said that the Ecuadorian delegation's position had been formally stated in the First and Third Committees of the 1958 Conference [4] and would be maintained. The International Law Commission, unable to discover any special rule of law to codify with regard to the territorial sea, had admitted the fact and had therefore recommended that any such rule should be established by an international conference. In the absence of any such rule, and amid the wide divergence of opinion, Ecuador steadfastly maintained that each State was free to fix the breadth of its territorial sea, within reasonable limits and with due regard to geographical, geological and biological factors, and to its population's economic needs and its security and defence. The divergence of views and practices showed the increasing modern trend for States, competent international bodies and the experts advising them to ensure for each State greater and more adequate control of the stretches of sea adjacent to their coasts, either by means of a broader territorial sea or by contiguous zones, fishery limits, conservation areas or continental platforms. Following that trend, the Government of Ecuador had proclaimed its paramount right to priority over all others in the exploitation of the resources of the sea near its coasts, as well as its special right, inherent in its geographical position, to conserve and protect the living resources of the sea, as was stated in footnote *l* to the table in document A/CONF.19/4. That paramount right had received tangible expression in a fisheries zone adjacent to its territorial sea, sufficiently broad to serve its essential purposes. In that connexion, he drew attention to the tripartite agreements signed in 1952 by Ecuador with Chile and Peru,[5] 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.

16. The Preparatory Committee for the Codification Conference at The Hague in 1930 had advocated in its report [6] the recognition of a broader territorial sea for certain States and the acceptance of a contiguous zone, for the purposes not only of control of the teritorial waters and enforcement of customs and sanitary regulations, but also for the purpose of fishing rights.

17. Dealing with the same problem and attempting to cope in part with the matter of fishing rights which some States were claiming in a contiguous zone and simultaneously to check the trend towards an extension of

[4] *Ibid.*, vol. III, 19th meeting, and vol. V, 9th meeting.

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

[6] League of Nations publication, 1929.V.2.

the territorial sea for fishing purposes, the Special Rapporteur of the International Law Commission had advocated, in his second report (A/CN.4/42) [7] the protection of the resources of the high seas, and had expressed the opinion that coastal States had, in principle, a right to make regulations for the protection of the resources of the adjacent sea which, to be effective, should be applicable in a zone more extensive than territorial waters. He had proposed for that purpose that it should be declared that every coastal State was entitled to enforce in a zone of two hundred nautical miles adjacent to its territorial waters the necessary conservation regulations for the protection of the resources of the sea.

18. The International Law Commission had subsequently studied in 1951 a proposal to the effect that, pending the establishment of a body which might settle disagreements about conservation measures, coastal States would be entitled to lay down conservation regulations within the limit of two hundred sea miles, but the vote had been a tie, and the Commission had decided to mention it in its report without sponsoring it.[8]

19. In 1953, the International Law Commission had adopted draft article 2 on fisheries,[9] whereby the coastal State or States would be entitled to take part on an equal footing in any system of regulating fishing in any area situated within one hundred miles from the territorial sea, even though their nationals did not carry on fishing in the area. The Commission had considered that clause as an element in the progressive development of international law and its codification, since the rules in force provided no adequate protection to the coastal State against wasteful and predatory exploitation of fisheries by foreign nationals.

20. At the International Technical Conference on the Conservation of the Living Resources of the Sea held at Rome in 1955, it has been recognized that a coastal State had a special interest in the measures of conservation to be applied, but opinions had been divided on the question.[10] Certain participants had attempted to have that view suppressed in the final report of the Conference, but the Ecuadorian and Indian delegations had forced its inclusion. Subsequently, although contested with a vigour which had at one time endangered the very existence of the Conference, the concept of the special and preferential right of coastal States had made such headway at the 1958 Conference that it had finally become an essential bargaining element in the various compromise formulae in a well-defined legal form, that of an adjacent fishing zone with exclusive fishing rights for coastal States.

21. The special and preferential right of the coastal State had received support at the present Conference from the most diverse quarters, and the fishing zone, which had once been so greatly condemned, was now being pressed in the various proposals before the Committee. That was astonishing testimony to the way in which the highest principles of law gradually came into their own, despite obstruction from selfish interests and considerations. Some vestiges of the past remained, however, and efforts were still being made to impede the full recognition of the rights of the coastal State. On the basis of alleged historic rights, most of which simply did not exist, an attempt was being made to neutralize the exclusive rights of the coastal State by the strange concept of a right of third parties to share in that State's resources.

22. Ecuador resisted the idea that any other State had any right, far less any acquired right, to the resources in the zones of the sea adjacent to its coast, over which it had declared its paramount and special right to conserve and protect the living resources of the sea. Ecuador denied the existence of legal acts on the part of other States purporting to entitle them to those resources. Any exploitation that had been carried out, so far from being a legal act, had been an unjust and arbitrary sequestration committed in the absence of any law authorizing such fishing. Large fishing undertakings from distant countries had invested their capital in the indiscriminate predatory exploitation of the living resources of the seas adjoining their own coasts and had exhausted them. Two or three States concerned had then introduced, too late, conservation measures and had even concerted them by means of conventions in which the so-called principle of abstention had been applied to a certain extent. They had then cast their eyes towards other more fertile regions, the maritime zones of Ecuador in particular, with their great resources of tunny and other species, which Ecuador itself, although lacking in large fishery undertakings, needed for its own population. It was quite obvious that such incursions by foreign fishing vessels did not and could not constitute legal acts which could become sources of law. They had no more justification in law than would have similar acts by Ecuador if it sent its fleets into the waters of foreign States. The Ecuadorian delegation had rejected the idea at the 1958 Conference that there existed any historic fishing rights off its coasts, and still did so, on logical and legal grounds.

23. It was coming to be increasingly recognized that there were special cases or situations which required separate study, and that the State concerned should have exclusive jurisdiction over its fisheries to a suitable distance. Such was the case of the South Pacific countries, Ecuador, Chile and Peru. Ecuador had a very long coast, but almost wholly lacked a continental shelf, which, in other areas, such as in parts of the United States, stretched for as much as 300 miles. In that connexion the International Law Commission had stated in its report on its second session that it would be unjust to countries having no continental shelf if the granting of the right to exercise control and jurisdiction over the sea-bed and subsoil of the submarine areas situated outside its territorial waters with a veiw to exploring and exploiting the natural resources there were made dependent on the existence of such a shelf.[11] Ecuador, therefore, had good grounds in law for asking for the recognition of legal compensation on that point. As the Brazilian repre-

[7] Original text in French published in *Yearbook of the International Law Commission, 1951*, vol. II (United Nations publication, Sales No.: 1957.V.6, vol. II), p. 75. English translation mimeographed.

[8] *Official Records of the General Assembly, Sixth Session, Supplement No. 9*, pp. 19-20.

[9] *Ibid., Eighth Session, Supplement No. 9*, p. 17.

[10] *Report of the International Technical Conference on the Conservation of the Living Resources of the Sea* (United Nations publication, Sales No.: 1955.II.B.2), paras. 45 ff.

[11] *Official Records of the General Assembly, Fifth Session, Supplement No. 12*, para. 198.

sentative had said at the 8th meeting, owing to the diversity of geographical and other factors, no two seas were alike. Hence it was impossible to frame a single uniform rule to cover all situations. It was by reason of such considerations that Ecuador urged that a special solution be sought for special situations like its own, a solution consonant with the paramount and special right which it claimed in the conservation and protection of the living resources of the sea near its coasts.

24. Mr. LIU (China) said that, in listening to the debate, his delegation had been impressed by the general awareness of the urgency of the problem. That common will to succeed was important, for unless success was achieved at the present Conference, it would be many years before another opportunity would arise to find a solution for two of the most crucial issues of the law of the sea. If the Conference were to disperse without reaching agreement, the instruments adopted in 1958 would be left incomplete and in some ways ineffective, and the efforts of the 1958 Conference would be largely nullified. Moreover, the confusion and controversy which had prevailed with regard to the questions of the territorial sea and fishing rights would be aggravated.

25. The Chinese delegation did not maintain a rigid position with regard to the question of the breadth of the territorial sea, but was prepared to co-operate in finding a reasonable and generally acceptable and applicable formula. His Government had for many decades applied the three-mile rule because it regarded that as the rule most widely accepted by the principal users of the sea and as satisfactory from the point of view of shipping and commercial interests. It had defended that position at The Hague Conference of 1930, and still considered that, unless there was a formal agreement to the contrary, the three-mile rule could not be regarded as obsolete or be entirely discarded. In the light of the deliberations of the 1958 Conference, however, his Government was prepared to support the proposal for a six-mile territorial sea as the best compromise. The formula would ensure adequate freedom for sea and air navigation, while accommodating the wish of many States to extend control over their coastal waters; its general application would also provide stable conditions for all users of the sea. His delegation could see no advantage in a more flexible formula, and could not subscribe to the view that considerations of national security called for an extension of the territorial sea beyond the six-mile limit.

26. The idea of a contiguous fishing zone was comparatively new. If a uniform rule concerning such a zone were to be established, equity for all the interested parties must be duly taken into consideration. While he had been impressed by the force of the Canadian representative's arguments at the 5th meeting in favour of the coastal State, it was impossible to disregard the interests of States whose economy was largely dependent on fishing in distant waters.

27. Of the proposals before the Committee, only the United States proposal (A/CONF.19/C.1/L.3) provided for the recognition of historic fishing rights, and even under that plan, States fishing in distant waters were required to give up their former fishing rights in the three-to-six-mile area. In the days when the territorial sea had been limited to three miles, that area, where more fishing was carried on than in the outer six-mile zone up to the twelve-mile line, had formed part of the high seas. The creation of a six-mile territorial sea would cause all foreign States to yield their former fishing rights in the three-to-six-mile area to the coastal State. Furthermore, only States with historic rights would be allowed to fish in the outer zone.

28. It should also be borne in mind that the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas provided for co-operation in conservation measures in areas of the high seas adjacent to the coastal State. Those principles might be strengthened and incorporated in the instrument on the fishing zone, so as to provide coastal States with some added protection and to allay their fears that the productivity of the contiguous zone might be impaired by foreign fishermen. In that way, it would be possible to safeguard the interests of the coastal State without causing undue hardship to those whose livelihood depended on distant-water fishing.

29. In the search for an acceptable compromise, several new ideas had emerged. For example, the 1958 version of the United States proposal [12] had been modified by the inclusion of limits relating to the species of fish caught and the level of the catch, and the Pakistani representative had suggested at the 12th meeting a period of five to ten years during which States fishing in distant waters would be allowed gradually to change over to other types of fishing. It was to be hoped that all those ideas would be elaborated and rendered acceptable to the largest possible majority. The Chinese delegation, for its part, believed that the best solution lay in a compromise between the United States and the Canadian proposals, the differences between which could undoubtedly be bridged, in the spirit of understanding and compromise which was the key to the successful conclusion of the Conference.

The meeting rose at 4.45 p.m.

[12] *Official Records of the United Nations Conference on the Law of the Sea*, vol. II, annexes, document A/CONF.13/L.29.

NINETEENTH MEETING

Thursday, 7 April 1960, at 10.40 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. Bouziri (Tunisia), Mr. El Bakri (Sudan), Mr. Radoulsky (Bulgaria) and Mr. Fattal (Lebanon)

1. Mr. BOUZIRI (Tunisia) said that he would confine himself to a number of conclusions, the strict accuracy of which was amply demonstrated by past experience.