Second United Nations Conference on the Law of the Sea

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Nineteenth 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)*

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. Radouilsky (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.

2. In the first place, international practice had never been uniform either with regard to the breadth of the territorial sea or with regard to fishery limits. Every country had always been, and still was, free to fix the limits of its territorial waters in the light of its geographical, economic and other circumstances with due regard for the freedom of the high seas. But as a general rule the distance of twelve miles had served as the maximum limit for the territorial sea: that fact could be of assistance in formulating for future use a universally applicable rule of positive international law. It was on the basis of those general principles on the one hand and on that of the dictates of security on the other hand that the Tunisian Government had considered that a breadth of twelve miles for the territorial sea could be adopted. In the opinion of his delegation, that limit would help to provide the security necessary for development, especially where unarmed or insufficiently armed countries were concerned. It would give them shelter from outside interference. The Tunisian delegation was gratified to see that that view was shared by many delegations.

3. In addition, his country had serious problems and anxieties due to the fact that Tunisia was situated in the Maghreb and in Africa, unhappy lands rent by conflict.

4. He did not believe that the freedom of the high seas, the freedom of navigation or the freedom of air traffic would be impaired by the application of the twelve-mile principle, since the right of innocent passage of merchant ships was universally recognized and the freedom of air navigation was amply safeguarded. If anarchy and oppression were to be avoided, the freedom of the high seas must be subject to the limits imposed by the right and duty of the coastal State to maintain its security and defend its interests.

5. As to the argument that extension of the breadth of the territorial sea to twelve miles would entail unduly onerous expenditure by the coastal State, the latter must clearly be the sole judge of that.

6. In the opinion of the Tunisian Government, the claim to a contiguous zone in which the coastal State would enjoy exclusive fishing rights was as legitimate as the claim to a territorial sea. As a general rule, the breadth of the fishing zone should be twelve miles, always provided that that limit did not injure the multiple rights and duties which in some cases the coastal State, by the process of history, exercised over sea areas outside the twelve-mile limit. The Tunisian Government, for instance, was in no way prepared to renounce its rights or to repudiate its obligations in respect of the " historic waters " of the Gulf of Gabès as delimited by Tunisian legislation.

7. Among the reasons which militated in favour of the adoption of a breadth of twelve miles for the coastal State's exclusive fishing zone was the need to ensure the conservation and rational utilization of the resources of the sea for the benefit of that State's population. That need was particularly pressing in the case of young and under-developed countries, whose level of living was extremely low. It would be neither wise nor fair to disregard the profound hopes and vital needs of those countries, which had long been denied their independence and resources to the advantage of other countries. It would be equally unfaur to attempt to deny them the resources of the sea that were naturally theirs by reason of their geographical position, and which an unkind fate had hitherto prevented them from defending or utilizing. The Tunisian delegation did not believe that the fact that foreign fishermen had operated in the waters close to the coast of a State — a situation that was often improper — could call historic rights into being, or that that factual situation enjoyed the same degree of legitimacy as the rights which the coastal State or its nationals were entitled to assert.

8. It was true that delicate problems would probably be created for those States which would be obliged to abandon the questionable practice of fishing in waters washing the shores of other countries. But it should be remembered that the riches of the high seas were immense, and that in most cases the States that would be affected by an extension of the fisheries zone were economically strong enough to find a quick remedy to the disadvantages caused by their exclusion from the fishing grounds in question. Lastly, the Tunisian delegation was not convinced that an extension of the fisheries zone for the benefit of the coastal State would entail a substantial reduction in the world production of fish. The outcome might well be the opposite. If their rights were finally recognized and respected, the States whose waters were rich in fish stocks but who were insufficiently equipped to exploit them would not hesitate to call upon the tehnically and economically more advanced countries for help in utilizing the resources of the sea in a manner both rational and profitable to all.

9. Turning to the proposals before the Committee, he said that his delegation could not support those submitted by the United States of America (A/CONF.19/C.1/L.3) and by Canada (A/CONF.19/C.1/L.4), which did not provide the Tunisian Government with the assurance it wanted in regard to the breadth of the territorial sea. Moreover, the United States proposal regarding the fisheries zone would seriously injure the interests and restrict the rights of the coastal State.

10. On the other hand, the Tunisian delegation found ample grounds for satisfaction and hope in the terms of the proposal submitted by sixteen countries of Africa and Asia (A/CONF.19/C.1/L.6). To be honest, it would have preferred a proposal laying down a uniform breadth for the territorial sea, but it had lent its name to the proposal because it regarded it as a reasonable compromise capable of commanding general acceptance.

11. In concluding, he would draw attention to the sacrifices made by his country and many other young nations to build up their economy and satisfy their essential needs. He appealed to the representatives of those countries which had repeatedly expressed their concern at the increase in poverty throughout the world to make an honest contribution to the development of the under-developed countries, emphasizing that the first step in that direction must be to refrain from any attempt to deprive the young and under-developed countries of the necessary safeguards for their security and the resources essential to their subsistence.

Mr. Sörensen (Denmark), Vice-Chairman, took the Chair.

12. Mr. EL BAKRI (Sudan) said that, though his country had not been able to attend the first United Nations Conference on the Law of the Sea, it had followed the proceedings closely; and he was glad to have the present opportunity of participating in the work of codifying rules on matters which had previously formed the subject of fragmentary and sometimes conflicting *ad hoc* legislation.

13. Since gaining its independence, Sudan had sought to add its modest contribution to the international efforts to maintain world peace, by observing conventions and treaties as well as by accepting responsibilities imposed by conventions and treaties previously entered into on its behalf by the Administering Power.

14. Those who had described the present Conference as the third convened to codify the law of the sea, counting The Hague Codification Conference of 1930, had overlooked one of the major developments which had taken place since 1930, namely, the number of countries that had become independent and which, with their different outlook, had taken their rightful place in the international community. In considering the problem of the breadth of the territorial sea, full account must be taken of the changes in institutions and ideas that had supervened during the past thirty years, and the final solution would have to accord with the contemporary spirit of political and social progress. One great transforming feature of recent years had been the economic and social advance that had closed the gap between the different ideological camps in East and West, thereby creating a basis for peaceful co-existence. On the other hand, the fundamental discrepancy between the economically developed countries, mainly situated in the northern part of the globe, and the developing countries in the south was still a threat to peace. The main task must be to remove that inequality.

15. As a representative of one of the so-called underdeveloped countries, he naturally supported a twelve-mile limit for the territorial sea, because such countries needed to extend their potential natural resources and to increase their margin of security.

16. The argument that in an age of inter-continental missiles a twelve-mile territorial sea would offer no protection against aggression had been belied by certain incidents of recent years, which were still recurring. At any time countries might be menaced by tests carried out with such missiles.

17. Again, the warning that a wider territorial sea would be more difficult to patrol and supervise was hardly compatible with the spirit of co-operation and understanding so widely professed. Surely the weakness of certain countries militated in favour of extending their territorial sea, and should not be seized upon as a pretext to deprive them of the exercise of a natural right. Sudan strongly supported a twelve-mile limit though fully aware of the inherent difficulties that its application would cause: normal progress must not be hamstrung by temporary technical difficulties easily surmountable by recourse to modern techniques, and given international co-operation.

18. Certain delegations had made great play with the objection that a twelve-mile limit would interfere with the practice of fishing in distant waters which would become the territorial seas of other countries. Such practices should not be recognized as a right. Nevertheless, his delegation might support a solution providing for a transition period, at the end of which such fishing would have to cease. A solution of that kind could be negotiated under bilateral or multilateral agreements, and need not necessarily be embodied in an international instrument, which should be confined to issues of principle.

19. It was his Government's policy to welcome cordially any friendly national or private enterprise wishing to establish a large-scale fishing industry on the Sudanese coast of the Red Sea, since any such initiative, provided it was compatible with Sudanese municipal law and local interests, could only contribute to the prosperity of the country and to that of the world at large.

20. Fears that a twelve-mile limit would be excessive were unfounded, since the right of innocent passage was safeguarded in section III of the Convention on the Territorial Sea and the Contiguous Zone adopted in 1958. Surely, with all States seeking to work together in harmony, the prerogative of innocent passage would not be abused. Though his own country and others in an analagous situation might, since their navies were comparatively very small, be considered to be less interested in the freedom of navigation in that part of the high seas which they regarded as part of their territorial sea, yet they attached equal importance to the right of innocent passage, and could only assure the great maritime Powers that they would do everything possible to uphold that most important rule of international law. That was the best guarantee that the small nations in process of development could offer to the large developed countries, which seemed afraid of them.

21. Mr. RADOUILSKY (Bulgaria) wished to present his delegation's views on the proposals submitted by the United States of America (A/CONF.19/C.1/L.3) and Canada (A/CONF.19/C.1/L.4). Both proposals rested on the principle that all States were entitled to fix the breadth of their territorial sea up to a maximum limit of six nautical miles, but, as he had pointed out in his general statement at the Committee's 4th meeting, both had been prompted essentially by military, not economic, considerations. The Bulgarian delegation believed, like many others, that a six-mile territorial sea was inadequate for coastal defence, and that it would offer substantial advantages to States with powerful navies. It was principally for those reasons that the two proposals were unacceptable to his delegation.

22. His main concern, however, was with the question of so-called historic rights. By article 2 of the United States proposal, the coastal State would have exclusive fishing rights in what was referred to as the " outer zone ", extending from the outer limit of its territorial sea to a maximum distance of twelve miles from the baseline, yet that " exclusive right " was virtually nullified by article 3, whereby any State whose vessels had fished in that zone during the period of five years immediately preceding 1 January 1958 might continue to do so on the same scale and for the same groups of species. Although the concept of " historic rights " in the " outer zone " was meaningless, he would use the term, for the purposes of his argument, in the sense imparted to it

by its originators. The primary object of the proclamation of those rights was to preserve and perpetuate existing privileges enjoyed by countries with large fishing fleets operating far from their own shores to the detriment of the coastal population of other States. Those privileges did not merely consist in the right to fish in the " outer zone "; they amounted in practice to virtual domination of large sea areas which were particularly rich in fish stocks.

23. He recalled that at the first United Nations Conference on the Law of the Sea the Canadian representative had interpreted the United States reservation as allowing any State which, over a period of five years, had regularly sent a few fishing boats to points within twelve miles of another State's coast, to continue to exploit in perpetuity not merely the same specific areas, but the whole " major body of water " concerned,[1] with the result that any State agreeing to the United States proposal would be signing away for all time rights to protect its fishermen in any area where foreigners had fished in the past. Although the United States proposal provided for certain limitations on such fishing by foreign States, the criticism of the Canadian representative was still cogent and justified.

24. As other speakers had pointed out, no accurate information was available about the species and quantities of fish caught in the " outer zone ". In any case, with modern fishing fleets and technical methods the average catch over a period of five years might well be the maximum possible. Thus, under the United States proposal, countries with large distant-water fishing fleets would be given every opportunity of taking maximal catches. That possibility assumed particular significance when viewed in the light of possible future depletion of fish and other living resources of the sea given the effectiveness of modern methods.

25. Moreover, the International Law Commission had stated, in paragraph 3 of its commentary on the articles on the conservation of the living resources of the high seas, that the existing law provided no adequate protection of marine fauna against waste or extermination, and that the resulting position constituted, in the first instance, a danger to the world's food supply.[2] But it was the coastal State that would suffer the consequences of any decline in fish stocks if a foreign fishing State were allowed a constant quota.

26. In cases where not one but several States enjoyed " historic rights ", it was quite conceivable that the entire catch in a coastal State's " outer zone " might go to such States, the coastal State being left with a purely theoretical " exclusive right " to fish in its own " outer zone ".

27. A further undesirable consequence of acceptance of the concept of " historic rights " had also been mentioned by the Canadian representative at the first Conference when he had stated that, if the United States proposal were adopted, new nations would be helpless to protect their own waters and would never acquire fishing rights elsewhere.[3] The concept of " historic rights " in relation to fishing was the product of an invidious tendency at the first Conference to elevate the dominant position of technically advanced countries into a system of legally sanctioned privileges — the same tendency as had given rise to the so-called " principle of abstention " and a certain conception of the rights of new nations. If such privileges were given legal sanction, the new and technically under-developed countries would be deprived of their right to utilize the natural wealth of their coastal waters.

28. He refuted the contention that the right of a non-coastal State to fish in the " outer zone " of another State could derive from the circumstance that the State in question had fished in that zone during the " base period ". According to some authorities, the institution of State servitude had application in international law, but, while State territory could be subject to servitude, the high seas, as *res communis*, could not. The " outer zone " was part of the high seas, yet recognition of " historic rights " there would entail recognition of that zone as the territory of the coastal State. Nor could " historic rights " be upheld on grounds of long usage, for the five-year " base period " hardly accorded with the concept of long usage recognized by international law.

29. Although in theory the coastal State would enjoy exclusive fishing rights in its outer zone, article 4 of the United States proposal provided that the foreign State that was entitled to fish in that zone should take such measures as were necessary to ensure that its vessels complied with the provisions of the convention envisaged laying upon it merely the obligation to notify the coastal State concerned of such measures as it might take. That proved that the rights of the foreign State took precedence. The provision for the settlement of disputes as set out in the annex to the United States proposal was equally unsatisfactory.

30. Under any system of municipal jurisdiction the claimant to a disputed right was the plaintiff, whereas the owner of the property was the defendant who could not be deprived of the property until the dispute had been settled. If those principles were applied *mutatis mutandis*, the coastal State would be the defendant and the non-coastal State would not be able to fish until the dispute had been settled. However, in section I of the annex to the United States proposal the existence of " historic rights " was assumed and the coastal State had to be the plaintiff in the proceedings and to prove that the other State had no such " historic rights ". Furthermore, the rule in that section did not allow the coastal State to prevent the other State from exercising the disputed right it claimed, stipulating as it did that the latter might continue to exercise the disputed right pending a settlement. The rule in section III was based on a similar premise, and the rule in section II also worked to the advantage of non-coastal States.

31. The United States proposal was therefore nothing but a draft for an inequitable multilateral agreement under which States enjoying so-called " historic rights " and possessing large fishing fleets would be accorded

[1] *Official Records of the United Nations Conference on the Law of the Sea*, vol. III, 54th meeting, para. 5.

[2] *Official Records of the General Assembly, Eleventh Session, Supplement No. 9*, p. 32.

[3] *Official Records of the United Nations Conference on the Law of the Sea*, vol. II 14th plenary meeting, para. 29.

privileges, hitherto unknown in international law, to the detriment of coastal States. It was in no way a compromise, and the Bulgarian delegation could not support it.

32. Mr. FATTAL (Lebanon) wished first to pay a tribute to the memory of Professor Gilbert Gidel, whose life had been devoted to scientific research and teaching, especially to the study of the law of the sea. His works on the subject were authoritative, and his name and opinions had frequently been quoted at the first Conference in 1958 by speakers of the most divergent views. Jurisprudence had suffered a severe loss by the death of Professor Gidel.

33. The second United Nations Conference on the Law of the Sea was a speculative endeavour in the sense that it had been instructed by the General Assembly of the United Nations to seek, as the breadth of the territorial sea and the fishing zone, a distance acceptable to all. There had been no fresh development since 1958, except in so far as the proposals submitted by the Canadian and United States Governments had won a few additional supporters. That being so, he would remind the Conference of the position taken by the Lebanese delegation in 1958. It had then been one of the first to advocate a solution which gave each State a certain freedom both as to area and as to time. With regard to the former, his delegation had advocated that the State should be free to determine the extent of its territorial sea at some point between a minimum of three and a maximum of twelve miles. To achieve some degree of uniformity, it might have been provided that the breadth should be fixed, for example, at three, six, nine or twelve miles — or one, three or four marine leagues — to the exclusion of any other figure. So far as time was concerned, the State would have been empowered, within the limits indicated, to change the extent of its territorial sea if the breadth adopted seemed to it to be harmful to its interests either in peacetime or in the case of a breach of the peace.

34. The solution had met with opposition, and its opponents were far from having exhausted their arguments. It had been said that uniformity was the essential feature of a rule of law. But the time was hardly ripe to speak of the uniformity, unity and perfection of the rule of law when the Conference was laboriously trying to establish a compromise that would be just acceptable generally. Recalling the maxim "*summum jus, summa injuria*", he emphasized that the strict letter of the law was very close to injustice, and that international law should be regarded not as a technique, but as a science in the service of man. In that field, there were dangers in uniformity.

35. Advocating the adoption of a pluralist solution, he stressed that international society would be tolerable, generous and tolerant only if it refrained from establishing inflexible rules. Many examples of legal pluralism were to be found in municipal systems of law, and his own country had set up that concept as a constitutional principle. Furthermore, several speakers had already come out in favour of the pluralist principle, in particular the Brazilian representative, who had referred to the special situation of Peru, Iceland and the Philippines. To quote a happy expression of Mr. Amado's, it could be said that no two seas were alike. Pluralism was inherent in nature, and the eminent expert Mr. François had not failed to say so in his report to the Second Committee of the Codification Conference held at The Hague in 1930, in which he had written that the differences of opinion concerning the breadth of the territorial sea " were to a great extent the result of the varying geographical and economic conditions in different States and parts of the world ".[4] In that connexion, Mr. Fattal pointed out that the geographical configuration of the earth had not changed during the last thirty years, and that the economic condition of many under-developed countries was even more precarious at the present time than when Mr. François had written the report in question.

36. Many speakers had extolled the freedom of the seas for fishing and navigation. But he would point out that unless that freedom was organized it might well be exploited to the detriment of the poor countries.

37. Moreover, those delegations which had submitted proposals had only too frequently resorted to historical arguments. Historical considerations should carry the least possible weight with the Conference, which was a legislative assembly: mutual respect for the interests involved should be its guiding principle. The Committee had heard long disquisitions on acquired rights, wrongly described as historic rights, and attempts had been made to set them up against the rights of the coastal State. A quick review of the situation was enough to show that among those who advocated a three-mile or a six-mile breadth for the territorial sea there were poor countries which were fighting for the conservation of their marine resources as well as rich and powerful States. Similarly, not all the partisans of a twelve-mile territorial sea were under-developed countries; they included some wealthy States which were similarly seeking to conserve and increase their resources. Any suggestion that the question was but one aspect of the war between capitalism and imperialism on the one side and the proletariat on the other was therefore an undue simplification. The Lebanese delegation accordingly took the view that an abrupt change in the *de facto* and *de jure* situations was undesirable. In order to avoid discouraging business initiative and the technical know-how of the wealthier countries, and to prevent unemployment amongst their technical experts, a transition period should be provided for; such a period was also necessary to allow the under-developed coastal States to prepare themselves to take over their functions and to make up for lost time, perhaps through technical assistance from other States which had long been profitably exploiting the living resources of their waters.

38. There were certain difficulties which made the possibility of agreement problematical. In 1958, a Convention on the Territorial Sea and the Contiguous Zone had been concluded which comprised all the rules relating to the territorial sea except that pertaining to the determination of its breadth. If the present Conference succeeded in concluding a convention on the breadth of the territorial sea, there would be two different instruments which could be signed and ratified independently. For example, one State might sign and ratify the convention on the breadth of the territorial sea while at the

[4] League of Nations publication, 1930.V.16, p. 210.

same time rejecting the provisions relating to innocent passage or the delimitation of baselines, thus creating an absurd situation. It ought to have been possible to review the 1958 Convention. As the Saudi Arabian representative had pointed out at the 1st meeting, there was a close interdependence between the breadth of the territorial sea and the other provisions governing it. Negotiation would perhaps have been possible had the present Conference been authorized to revise certain provisions of the 1958 Convention. For example, had the coastal State been entitled, within its contiguous zone, to take the control measures necessary to avert threats to its security by foreign warships it would have doubtless been possible to reconcile opposite viewpoints to some extent. The Preparatory Committee of the Codification Conference of 1930 had foreseen just such a possibility, and in that connexion Professor Gidel had pointed out that the claim to a special coastal security zone could not be considered as an unfounded innovation in international practice. Moreover, he had been a sound prophet when he had pointed out that a general agreement on the breadth of the territorial sea could be reached only by means of the contiguous zone.

39. In concluding, he warned the Conference of the situation that might result from the adoption by the requisite two-thirds majority of a proposal for the introduction of a six-mile limit for the territorial sea with a further six miles of contiguous zone. There would be an irreducible nucleus of about thirty States scattered over the world, representing about one-third of its population, that would remain ardently attached to the twelve-mile limit. There would thus be a schism in the international law of the sea which would be perpetuated in international instruments, and under the pretext of ensuring the unity and uniformity of a rule of law the Conference would have succeeded in shattering the very unity of international law itself.

The meeting rose at noon.

TWENTIETH MEETING

Thursday, 7 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. Koretsky (Ukrainian Soviet Socialist Republic), Mr. Gros (France), Mr. Shukairy (Saudi Arabia) and Mr. García Robles (Mexico)

1. Mr. KORETSKY (Ukrainian Soviet Socialist Republic) said that there would have been no difficulty in reaching agreement on the breadth of the territorial sea if all the participants in the Conference had based their positions on the need to embody in conventions the progressively developing practice of States. No one was now proposing a return to the three-mile limit, which had been described as obsolete by a number of speakers. Already in 1930, Professor Giannini had said that the three-mile limit could no longer be justified and, while stating that the six-mile limit seemed to fill the needs of the time, had added that the future development of the breadth of the territorial sea could not be foreseen. The International Law Commission had taken a similar view, which had been confirmed by the overwhelming majority of delegations to the 1958 Conference.

2. The controversy at the present Conference seemed to relate mainly to two sets of proposals. On the one hand there was the clear and easily applicable proposal of the USSR (A/CONF.19/C.1/L.1), providing for a limit of twelve nautical miles, which coincided with the basic intention of the proposal submitted by Mexico (A/CONF. 19/C.1/L.2) and the sixteen-Power proposal (A/CONF. 19/C.1/L.6). The USSR proposal took into account developments in state practice and the national interests of all States, by ensuring their political and economic security and their free and exclusive utilization of the resources of their own seas. On the other, there were the proposals which fixed the breadth of the territorial sea at six miles. The latter, submitted by the United States (A/CONF.19/C.1/L.3) and Canada (A/CONF.19/C. 1/L.4), could not be regarded as anything other than half-measures, since they failed to take actual developments into account. Only eleven States had fixed the breadth of their territorial sea at six miles, whereas seventeen States had enacted legislation establishing the limit at twelve miles, and more would undoubtedly enact like legislation in the near future. From the realistic and practical point of view, it was obviously impossible by a mere vote to impose upon Governments a breadth of territorial sea other than that which they had established for themselves; such a course would be contrary to the principle of territorial inviolability. The only realistic approach towards establishing a legal rule, embodied in a convention, was to strive towards unanimity. The fixing of the territorial limits of the State and, consequently, its territorial sovereignty, could not be the subject of bargaining. The Conference's true and only task was to fix the maximum breadth of the territorial sea, as it had evolved historically, and the maximum breadth could not, of course, be less than the limit already fixed by a number of States. The establishment of such a limit in a binding convention had the further advantage of not forcing any State to reduce the boundaries of its territorial waters. Moreover, such a rule would in no way oblige all States to fix the same limits, and any country wishing to retain a three-mile or six-mile limit would be free to do so. It would be for the legislative bodies of each country to take the relevant decision, within the limit established by international law in accordance with historical developments. The Cambodian representative had rightly said at the 12th meeting that States which had already declared a breadth of twelve nautical miles or more were unlikely to ratify a convention which would oblige them to revert to a narrower breadth; legal rules must be based on realities and not on abstract principles that were not unanimously accepted.