# Second United Nations Conference on the Law of the Sea

Geneva, Switzerland
17 March – 26 April 1960

Document:-
**A/CONF.19/C.1/SR.2**

## Second 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)*

the basis of expert legal opinion, a code covering the entire field of the international law of the sea.[3] The main principles embodied in that code had admittedly been adopted by the 1958 Conference; but that body had largely disregarded the Commission's conclusions on the breadth of the territorial sea, and, embodying in its conventions only faint shadows of the principles laid down by the Commission, had failed in its duty to take the forceful decisions in the matter that the Commission had asked it to take.

11. As the Commission had unanimously asserted, international practice was not uniform as regards the delimitation of the territorial sea, the limits claimed by States ranging all the way from three to two hundred miles. That lack of uniformity was of long standing, and had been recognized by eminent legal institutions, such as the High Court of Justice in the United Kingdom as long ago as 1916. The present Conference had been convened for the precise purpose of remedying that lack of uniformity — an achievement which had eluded The Hague Conference of 1930 and its Second Committee — and in so doing would do well to bear in mind two principles enunciated by the Commission: first, that "international law does not permit an extension of the territorial sea beyond twelve miles"; [4] second, that "The extension by a State of its territorial sea to a breadth of between three and twelve miles was not characterized by the Commission as a breach of international law".[5] Thus, in the Commission's view, the three-mile limit was no longer an established rule of international law and the proclamation by a State of a twelve-mile limit for its territorial sea did not constitute an encroachment on the high seas.

12. He had presented to the 1958 Conference the results of comprehensive research which he had carried out on the three-mile rule, based on state practice, case law and treaty precedents — mostly from Anglo-American sources. Accordingly, on the present occasion he would confine himself to stating that the three-mile limit might be taken as a minimum, but not as a maximum. In support of his contention, he cited a number of authorities whose pronouncements as scholars of international law reflected state practice from the middle of the nineteenth century, as well as the Treaty of Peace, Friendship, Limits and Settlement concluded between the United States of America and Mexico in 1848, which had fixed the territorial sea of the two countries at nine nautical miles.

13. The International Law Commission had established the fact that a twelve-mile limit was supported by State practice, and had concluded that such a limit was not a breach of international law. The present Conference should be guided by that statement of the law enunciated by a body of distinguished jurists representing all the main legal systems of the world after exhaustive discussion and the closest study. He advocated the adoption of a formula along the lines suggested by the Commission, which represented a compromise providing the necessary degree of flexibility whereby States satisfied with a limit of less than twelve miles could maintain their traditional position, and those opting for the maximum of twelve miles could seek no further extension.

14. That formula also had the merit of being practical. States which had adopted or were advocating a twelve-mile limit formed a cross-section from all parts of the world that did not correspond to any particular political or economic grouping. Their attitude was the result of historical development flowing from a number of different factors, and adherence to a twelve-mile limit had inevitably created certain defence and economic interests which must not be jeopardized.

15. A maximum limit of twelve miles would not cause injury to States claiming less, and would not operate in a discriminatory manner, because it provided a comprehensive solution that should satisfy all and penalize none. Any other formula was bound to be discriminatory.

16. Before concluding, he felt obliged to mention the military aspect, which had previously been passed over in silence though very much in the minds of many. A maximum limit of twelve miles would not redound to any State's disadvantage, since it was non-discriminatory and allowed those which were at present claiming less to extend their territorial sea up to that distance if they though it necessary to do so to meet their military requirements. In any event, with the conquest of outer space and the development of the intercontinental ballistic missile, the sea would gradually lose its importance as the scene of warlike operations.

17. A twelve-mile limit, being realistic and equitable, offered the only chance of agreement. The Hague Conference of 1930 and the first United Nations Conference on the Law of the Sea had failed because they had obstinately refused to face the realities of international life.

18. He had sought to give a lucid picture of the situation in order to urge the Conference to seize its opportunity of acting in a statesmanlike manner.

The meeting rose at 12.35 p.m.

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## SECOND MEETING

*Tuesday, 22 March 1960, at 10.45 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. Tunkin (Union of Soviet Socialist Republics) and Mr. García Amador (Cuba)*

1. Mr. TUNKIN (Union of Soviet Socialist Republics) expressed the hope that the marked improvement in the climate of international relations, which had already

[3] *Official Records of the General Assembly, Eleventh Session, Supplement No. 9*, pp. 4 ff.

[4] *Ibid.*, p. 4.

[5] *Ibid.*, p. 13.

had a beneficial influence on the fourteenth session of the General Assembly and the Conference on Antarctica, would do the same for the work of the present Conference. Although the first United Nations Conference on the Law of the Sea had not been able to complete its work in 1958, it had made a considerable contribution to the codification of the law of the sea. The USSR delegation hoped that the present Conference would make a new contribution by solving the closely linked problems of the breadth of the territorial sea and of fishery limits, which were both of vital concern to coastal States.

2. Hitherto, coastal States had themselves fixed the breadth of their territorial sea, with due regard for their own interests and circumstances. With a few exceptions, that breadth nowhere exceeded twelve nautical miles. It was the Conference's task not to establish a uniform breadth of the territorial sea applicable to all countries, but to agree upon a maximum limit. The International Law Commission, after a careful study of the legal status of the territorial sea, had concluded that international law did not permit its extension beyond twelve miles, from which it followed that any breadth of territorial sea up to twelve nautical miles was permissible under international law.

3. At the first Conference, many States, mindful of their independence and national security, of the need to protect their national fishing, and of the current trend in international practice, had been in favour of a twelve-mile limit. Other States, moved mainly by military and strategic considerations, had urged the adoption of a narrower limit — three or six nautical miles. The 1958 Conference had dealt the deathblow to the contention that the three-mile limit was a general rule of international law, and had shown that even a six-mile limit was not generally acceptable. For its part, the Soviet Union delegation had proposed that each State should fix the breadth of its territorial sea, in accordance with established practice, within the limits, as a rule, of three and twelve miles.[1] Certain objections having been raised to the wording of that proposal, his delegation was submitting to the second Conference a new proposal (A/CONF.19/C.1/L.1).

4. That proposal, which his delegation believed to reflect the best of current practice in the matter, was based on the premise that although a State had the right to extend its sovereignty over a belt of sea twelve nautical miles wide, it was not obliged to do so; it was free to extend its sovereignty over a narrower belt, but would then retain fishing rights up to the twelve-mile limit. The proposal also had an important bearing on the security of coastal States, some of which were at present vulnerable to intimidation by demonstrations of force in their coastal waters, even in time of peace. There had been instances of large-scale naval manoeuvres, reconnaissance by sea and by air and attempts to interfere with shipping by foreign forces in the coastal waters of certain States.

5. The debates on the breadth of the territorial sea at the first Conference proved that military and strategic considerations which had nothing to do with the preservation of peace and the development of international co-operation underlay the objections to fix a twelve-mile limit for the territorial sea. Indeed, although a proposal was adopted by the first Conference recognizing the right of a State to a twelve-mile zone for customs, sanitary, fiscal and immigration purposes, yet, when the Polish delegation proposed that in that zone the State should also have the right to prevent violations of its security, its proposal was rejected by those States which were against a twelve-mile limit for the territorial sea.

6. It was noteworthy that when at an early stage of the 1958 Conference it became clear that a three-mile limit for the territorial sea was doomed to failure, the United Kingdom, which had been resolutely opposing a twelve-mile territorial sea, agreed to extend the territorial sea up to six miles, provided ships, including warships, and aircraft of all nations would continue to enjoy the right of navigation beyond the three-mile limit.

7. The opponents of the twelve-mile limit for the territorial sea seemed therefore to be willing to admit that a State might exercise a wide range of rights in the twelve-mile zone, but under the express condition that the exercise of those rights should not interfere with the freedom of warships and aircraft of certain States navigating near foreign coasts. As such activities had not infrequently contributed to an increase in international tension, the acceptance of a twelve-mile limit could not fail to further the interests of world peace.

8. Adoption of the Soviet Union proposal would also promote the protection of coastal fisheries, which was a matter of grave concern to many States. Complete sovereignty over its coastal waters alone enabled a State to exercise fully its exclusive right to protect and exploit the living resources thereof. Moreover, as fish habitually migrated, conservation measures taken by a coastal State would redound to the benefit of other States exploiting the same resources outside coastal waters.

9. Lastly, the argument that the adoption of a twelve-mile limit for the territorial sea would restrict the freedom of navigation and result in longer trade routes and hence push up shipping costs and commodity prices was quite unfounded, given the generally recognized right of innocent passage for merchant shipping through territorial waters. Furthermore, the free passage of ships and commercial aircraft along established international routes which crossed the waters of foreign States was adequately safeguarded in specific multilateral and bilateral agreements which would not be affected by an agreement on the breadth of the territorial sea.

10. He emphasized the dangers of adopting texts which were condemned in advance to remain a deal letter, as many international conferences had done. Although the rules of international law were the outcome of agreements between States, such agreements, like the development of international law generally, rested upon certain laws of social development, and any text which did not conform to those laws and to the facts of reality must be fruitless. The success of the present Conference would depend on the elaboration of rules that would meet such needs. The past decade had displayed a definite trend towards an extension of the breadth of the territorial sea. That trend sprang naturally from radical changes in the international situation, from recent

[1] *Official Records of the United Nations Conference on the Law of the Sea*, vol. III, annexes, document A/CONF.13/C.1/L.80.

technical advances, and from the drive of many States to safeguard their security and independence and to defend their economic interests. At the previous meeting the Saudi-Arabian representative had righly pointed out that the twelve-mile limit was commended by States in different continents and with different political and social systems; the freshly emergent States in many parts of the world were particularly anxious to establish a twelve-mile territorial sea.

11. The Soviet Union proposal thus reflected a progressive trend, and was in harmony with such new principles of international law as the right to self-determination and the right to fetterless exploitation of national resources — principles which lay at its very root. In the opinion of the Soviet delegation, the Conference should seek not temporary and improved solutions which might have only a negative effect on the development of international co-operation, but the establishment of rules of international law in conformity with the present situation and trends.

12. Mr. GARCIA AMADOR (Cuba) said that at the 1958 Conference the Cuban delegation had taken only a limited part in the debates on the breadth of the territorial sea and fishery limits, not because of any lack of interest in those questions, but because it had wished to learn the views of other delegations and to acquaint itself with the prevailing trends of opinion before taking a definite position in the matter.

13. Certain conclusions could be drawn from the proceedings of the 1958 Conference. With regard to the breadth of the territorial sea, it was clear that the principle of the marine league no longer enjoyed general support, as had been shown by the small number of delegations which had then advocated its recognition. The 1958 Conference had also revealed that very few States objected to the extension of the territorial sea up to a breadth of six nautical miles. But none of the proposals seeking to authorize the extension of the territorial sea beyond six nautical miles had commanded a majority in 1958.

14. Although there had been some changes in the attitude of States in the interval between the two Conferences, none of them had materially affected the general pattern of views held on the breadth of the territorial sea. The Cuban delegation was therefore inclined to focus its attention on the fishing rights claimed by certain States in sea areas beyond a distance of six miles from their coasts, since that issue would probably be the crucial one at the present Conference.

15. The rights which it was proposed to confer upon the coastal State in the matter of fishing could be either exclusive rights or simply preferential rights. Considering that the living resources of the sea were legally *res communis*, claims to exclusive fishing rights beyond the outer limit of the territorial sea would, by the traditional principles of international law, be subject to categorical rejection. However, the idea of conferring upon the coastal State exclusive rights in respect of the conservation, and even the exploitation, of certain living marine resources, or of all of them, beyond the limits of the territorial sea was not inconsistent with international law in the latter's present stage of development, for the reason that those rights would safeguard the special interest of the coastal State, a special interest which had gained recognition at international conferences, including the 1958 Conference on the law of the sea.

16. A coastal State could have a special interest in certain living resources of the sea because of the vital importance of its coastal fisheries to its economy or food supply. But that special interest could never justify the complete exclusion of foreign fishing craft from the fishing ground concerned. Such absolute exclusion would be justified only in the interests of optimum sustainable yield. So long as the productivity of a fish stock or stocks was not affected, the coastal State could not exclude foreign fishermen from harvesting those resources elsewhere than in its internal waters or territorial sea, for such exclusion would be inimical to mankind's interest in one of its most important sources of food and would also ride roughshod over the historic rights of States whose nationals had consistently fished the sea areas in question from time immemorial.

17. Most of the difficulties — perhaps, indeed, all of them — would be overcome if preferential rather than exclusive rights were conferred on the nationals of the coastal State. The 1958 Conference itself had adopted a resolution along those lines.[2] The resolution recommended the recognition of the " preferential requirements of the coastal State resulting from its dependence upon the fishery concerned while having regard to the interests of other States " wherever it became necessary, for the purpose of conservation, to limit the total catch of fish in an area of the high seas adjacent to the territorial sea of the coastal State. The scope of the resolution, however, was limited to the " situation of countries or territories whose people are overwhelmingly dependent upon coastal fisheries for their livelihood or economic development " and to the situation of " countries whose coastal population depends primarily on coastal fisheries for the animal protein of its diet and whose fishing methods are mainly limited to coastal fishing from small boats ".

18. Another shortcoming of that text was that it failed to recognize the right of countries in either of the two groups cited to adequate or effective means to protect their special interests and needs. Moreover, since the rights involved were preferential and not exclusive, they should have been recognized on a more liberal basis. The two cases covered by resolution VI were exceptional ones. A much more common case was that of a coastal State whose nationals were habitually engaged, in a sea area contiguous to its territorial sea, in fishing activities which were of economic importance to it. That third instance of special interest on the part of the coastal State should be equally acknowledged.

19. Recognition in all three cases of effective preferential rights in favour of the coastal State was the minimum concession the non-coastal States could make to the special interest of such States. That recognition would go a long way towards satisfying the requirements which had led certain States to make extensive claims in respect of the breadth of their territorial sea, claims which were largely intended to safeguard needs in respect of fisheries. The preferential rights of the coastal State could, in certain

[2] *Ibid.*, vol. II, annexes, document A/CONF.13/L.56, resolution VI.

cases, even justify the exclusion of foreign fishermen, if such exclusion became necessary for purposes of conservation, in other words, where the total catch of a stock or stocks of fish had to be substantially curtailed. Maximum protection would thus be given to the legitimate interests of the coastal State in a way which would be impracticable with a contiguous zone that must necessarily be limited in scope. Moreover, that desirable result would be attained without conferring upon the coastal State rights and obligations unrelated to fisheries, and prerogatives which it might exploit to the detriment of the legitimate interests of others.

20. There remained the important question of historic fishing rights — one of great interest to Cuba. Such rights would come into conflict with the rights of the coastal State wherever the latter extended its territorial sea beyond the traditional limits or claimed exclusive rights in respect of fisheries beyond the outer limit of the territorial sea, thereby affecting areas of the high seas in which the nationals of another State had been fishing constantly from time immemorial. The State whose nationals had thus traditionally fished an area of the high seas could be said to have acquired prescriptive fishing rights in that area; those rights could carry even greater weight than those of the coastal State itself—for example, where the latter's nationals engaged in little or no fishing activity in the area. And that argument was even more cogent where the activities of the nationals of the coastal State were such that they could not possibly affect the productivity of the local fish stock or stocks.

21. The situation was changed if the rights accorded the coastal State were preferential and not exclusive. Preferential rights would justify limitation of the total catch of fish only where that was essential to proper conservation—in other words, to maintain or restore the optimum sustainable yield of a fish stock or stocks. The attainment of that objective was of concern to all States whose nationals fished the resources, and their general interest would be served even when it became necessary temporarily to exclude fishing by States other than the coastal State in the interests of conservation. But experience showed that conservation did not normally demand such drastic curtailment of fishing. Nevertheless, where a conflict arose between historic rights and the preferential rights of a coastal State, the latter should prevail in the two cases envisaged by resolution VI of the 1958 Conference. That solution was consistent with contemporary trends in international law, as evidenced by the proceedings of the 1958 Conference. The only prerogative which could be recognized in that situation if a State possessed historic rights was the right to special or preferential treatment as compared to other non-coastal States. It would be illogical and unfair, when placing restrictions on fishing, to treat identically one State whose nationals had been fishing uninterruptedly and from time immemorial in certain sea areas and another whose nationals had only recently begun to fish there.

22. The position was different in the third of the three cases mentioned earlier—namely, that of a coastal State whose nationals were habitually engaged, in an area contiguous to its territorial sea, in fishing activities which were of economic importance to it. But there could be not doubt that the special interest of the coastal State should, even in that third type of situation, prevail over the interests of non-coastal States in general. Where historic rights could be invoked, however, reason and justice required that those rights be given equal protection with the preferential rights of the coastal State. If it became necessary for the purposes of conservation to limit the total catch of a stock or stocks of fish in a given area, both the nationals of a coastal State therein and those of a State possessing historic rights were entitled to the same preferential treatment over foreign fishermen. As a rule, such treatment of historic rights would not materially affect the interests of the coastal State; indeed, it would not affect those interests at all in cases where the nationals of the State invoking its historic rights exploited the resources concerned on such a small scale that their productivity was unaffected.

The meeting rose at 11.50 a.m.

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## THIRD MEETING

*Wednesday, 23 March 1960, at 10.45 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. Tuncel (Turkey), Mr. Mau (Republic of Viet-Nam and Mr. Martínez Moreno (El Salvador)*

1. Mr. TUNCEL (Turkey) associated himself with the appeal for wisdom, skill, patience and conciliation on the part of all delegations, made by the President of the Conference at the first plenary meeting. Circumstances were more propitious to agreement than they had been in 1958, because States appeared to be better prepared for the examination of the complex problems involved. The almost continuous contacts maintained since the first United Nations Conference on the Law of the Sea had certainly contributed greatly to a better understanding of the various issues, and he hoped that all those taking part would do their best to smooth out divergencies of view arising from conflicting economic or political interests.

2. In 1958, the Turkish delegation had declared itself willing to accept a three-mile limit to the territorial sea if that proposal commanded general support.[1] However, it was no exaggeration to say that States were tending to claim greater breadths. His delegation believed that in dealing with that issue the present Conference should endeavour to ensure freedom of navigation and flight to the greatest possible extent.

[1] *Official Records of the United Nations Conference on the Law of the Sea*, vol. III, 14th meeting, para. 36.