Second United Nations Conference on the Law of the Sea

Geneva, Switzerland
17 March – 26 April 1960

Document:-
A/CONF.19/C.1/SR.20

Twentieth 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)*

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.

3. Turning to the objections to the USSR proposal raised during the debate, he said he could not agree with the United States and Australian representatives, who argued that the rule concerning the breadth of the territorial sea was determined by the principle of the freedom of the high seas. In the first place, that argument was illogical; it was, on the contrary, the extent of the high seas and the limits of the freedom of the sea which were determined by the limit of the territorial sea. Article 1 of the 1958 Convention on the High Seas defined the high seas as " all parts of the sea that are not included in the territorial sea or in the internal waters of a State ". Furthermore, the argument was historically incorrect, for the concept of the territorial sea had been evolved by the coastal States in reaction to incursions of the States which had gained mastery of the seas. In the era of the scramble for colonies, it had been the practice of the great maritime Powers to seize the coasts of countries which they wished to invade and to penetrate into the hinterland. Anxious to keep foreign ships at a " respectful distance ", which had then been the distance of a cannon-shot, from their shores, the coastal States had sought to fix their territorial seas at a breadth which would ensure their security and enable them freely to exploit the resources of their own seas. In times of revolutionary and liberation movements, one of the first moves of fighters for freedom had been to establish adequate limits for the territorial sea; the " British Seas " in Cromwell's time had been defined " to the largest extent of these seas ", and the problem of the territorial sea had arisen in the early days of the United States and during the French revolution. The young Soviet State, embattled after the October revolution of 1917, had reaffirmed the pre-existing twelve-mile limit. It was perfectly natural for newly independent States to tend to increase their territorial sea to twelve nautical miles, in order to fend off depredations by foreign warships and fishing fleets and the diversionist activities of reactionary forces.

4. The countries which were trying to retain their hold over former colonial territories were inventing arguments against the twelve-mile limit. They asserted that that limit would hamper freedom of navigation; but so long as that freedom was not turned into an instrument of penetration into foreign waters and territories, the right of innocent passage through territorial waters fully secured the interests of international shipping which, incidentally, owing to modern technical advances, no longer needed to keep close in-shore. Another argument cited against the twelve-mile limit was that of the risk of interference by the coastal State with international navigation; those who used that argument, however, ignored the fact that certain States had not hesitated to impede the passage of foreign merchant vessels in areas far beyond the limits of territorial waters. It had also been said that the broader the territorial sea, the greater would be the expenses incurred by shipping, for ships would have to anchor farther out at sea at greater depth; actually, however, the depth of the sea did not always depend on the distance from the shore, and anchors would be used by a ship in transit in exceptional circumstances only, for the right of innocent passage did not imply the right to stop in territorial waters. The United States representative had gone into details concerning the height at which a navigator must stand to see the shore from a distance of twelve miles; but in the early days of navigation, when there had been no technical means of determining distance from the shore, the distance of visibility had been determined at 14 to 28 miles. It had also been claimed that a twelve-mile territorial sea would involve the coastal State in considerable expense in the discharge of its duties under the 1958 Convention on the Territorial Sea and the Contiguous Zone. It should be noted, however, that article 16 of that Convention merely obliged that State not to hamper innocent passage of foreign merchant vessels through the territorial sea and to give appropriate publicity to any dangers to navigation in that sea of which it had knowledge.

5. It was obvious to all unprejudiced persons that a wider territorial sea was essential for the safety of the coastal State. At various times, the United States itself had attempted to establish a security zone of 300 miles for the American continent; but the United States representative was now asserting that a wide territorial sea was unnecessary for the security of peace-loving States. The Canadian representative had argued that a narrower territorial sea would best ensure the security of coastal States, because control could be exercised more effectively. Those arguments could not convince States which were anxious to preserve their independence and had no aggressive intentions against other countries. They knew that a narrowing of their territorial waters would facilitate access to their shores by hostile warships and military aircraft and would open the door to military and economic penetration by other countries. The head of the United States delegation had spoken more frankly at a recent meeting of the United States Senate Foreign Relations Committee, where he had stated that his country wished the territorial seas to be narrowed as far as possible, in order to ensure the maximum possibility of deployment, transit and navigation in the open seas, free from the jurisdiction and control of individual States. The unfounded allegations concerning so-called activities of Soviet submarines could convince no one, and merely served as a proof of the weakness of the position of those who advanced them. The Conference should be thinking not in terms of war, but in terms of peaceful co-existence. The march of time could not be stopped and the significance of the territorial sea as a safety barrier was being increasingly widely recognized, particularly by nations which had thrown off the yoke of political and economic dependence and were determined to strengthen their sovereignty and security.

6. If the legitimate need of States for a twelve-mile territorial sea were accepted, other connected problems, including that of the contiguous fishing zone, could be easily solved. While the development of technical fishing methods had created new possibilities for the rational exploitation of the resources of the sea, large monopolies were using their well-equipped fishing fleets to cause depredations of the fish resources near the shores of foreign countries, where fish usually abounded. The coastal States could best be protected against such forays by the extension of their territorial sea to twelve miles. A strange situation had, however, arisen: a number of States were prepared to agree to a twelve-mile fishing zone, but refused to accept a twelve-mile limit for the territorial sea.

7. At the 1958 Conference, his delegation had drawn attention to the fact that, juridically, the contiguous zone was merely a prolongation of the territorial sea. The close connexion between the territorial sea and the contiguous zone was not a new concept; it had been argued at the 1930 Conference at The Hague that there was no essential juridical difference between the two areas. It might be said that the same legal characteristics were attached explicitly to territorial waters, and implicitly to the contiguous zone; that was clear from the accumulation of the powers which the coastal States traditionally exercised in the contiguous zone. Originally, that zone had been established in answer to the policy of the great maritime Powers of trying to confine the coastal States to a narrow limit of territorial waters; it was, in fact, an indirect way of extending the breadth of the territorial sea. Exclusive fishing zones should similarly be regarded as an integral part of the territorial sea.

8. In the past, the great maritime Powers had recognized contiguous zones to the extent only to which it was expedient for them to recognize them, and had resisted the recognition of fishing zones outside territorial waters. At the 1930 Conference, the representatives of Portugal and Iceland had argued in favour of a broader territorial sea with a view to protecting coastal fishing industries and securing the recognition of fishing zones. That attempt had been thwarted, and subsequent codifications excluded fishing zones from the lists of recognized contiguous zones.

9. Nevertheless, the connexion between fishing zones and territorial waters would become clearer if one looked at other types of contiguous zone. Whereas, for example, customs, sanitary and fiscal zones might be regarded as manifestations of the administrative and police functions of the State, fishing zones were connected with territorial sovereignty, for in them the nationals of the coastal State had the right to exploit the resources of the sea. Just as the usufruct of the earth was connected with the right to territory, so exclusive fishing rights were connected with a State's rights in its territorial sea. In that connexion, he pointed out that even under the Canadian proposal (A/CONF.19/C.1/L.4), a State entitled to establish a contiguous fishing zone would have in it " the same rights in respect of fishing and the exploitation of the living resources of the sea as it has in its territorial sea ".

10. Accordingly, the best way on affirming exclusive fishing rights would be to extend the breadth of the territorial sea, since the fishing industries of the coastal State would then be fully protected by all the consequential sovereign rights. Such a solution would not, however, suit the policies of certain States, which were trying to reduce the breadth of the territorial sea as far as possible, in order to achieve the greatest possible manoeuvring space for their warships and military aircraft. Thus, they were prepared to " compromise " by retaining their so-called historic fishing rights in foreign waters. Clearly, their willingness to agree to provisions extending fishing zones was motivated, not by economic interest, but mainly by military considerations. That was why they were trying to separate the fishing zone from the territorial sea, with its characteristic sovereignty. It was significant that the fishing zone was called " the outer zone " in the United States proposal (A/CONF.19/C.1/L.3), and although that semantic conceit could clearly not change the real nature of exclusive fishing rights, it was a pity that States like Canada and Iceland, which were deeply concerned with the protection of their fishing, had followed the idea of a separation between the two belts of sea. Instead of using the best legal means of protecting their national interests by insisting on an extension of their territorial sea to twelve miles, those delegations were, without any doctrinal foundation, differentiating between the fishing zone and the territorial sea, and were thus weakening their chances of securing exclusive fishing rights.

11. Mr. GROS (France) said that his delegation supported the United States proposal (A/CONF.19/C.1/L.3) for the reasons it had explained in 1958.[1] He would review the present situation, commenting first on the questions of law and secondly on the economic and technical problems.

12. With regard to the questions of law, he protested against inaccurate conclusions drawn from quotations taken out of context from the works of such eminent jurists as Anzilotti and Gidel. He warmly thanked the representative of Lebanon for the tribute he had paid to Professor Gidel. Out of respect for the memory of Professor Gidel, Mr. Gros wished to rectify some of the inaccurate statements which had been made. To begin with, it was not the case that every State was free to determine a breadth of up to twelve miles for its territorial sea. That assertion could easily be demolished by reference, on the one hand, to the ruling of the International Court of Justice in the Anglo-Norwegian Fisheries case in 1951, to the effect that the delimitation of sea areas always had an international aspect and could not be dependent merely on the will of the coastal State,[2] and, on the other, to the report of the International Law Commission on the work of its eighth session. The Commission stated that, since several States had established a breadth of between three and twelve miles, while others were not prepared to recognize such extensions, it had been unable to take a decision on the subject.[3] That meant that a breadth exceeding three miles was lawful only with respect to countries which agreed to it but not with respect to others. Hence, it had to be recognized, firstly, that the three-mile rule, far from being dead, was still the rule applied by many States and was the only rule that did not need express recognition by the international community; and secondly, that any other limit was valid internationally to the extent only to which it was expressly or tacitly acknowledged by the other States.

13. Another error which was often made was to claim that there was freedom of passage in the air-space above the territorial sea; Mr. Gros read article 9 of the 1944 Convention on International Civil Aviation which allowed any State to establish prohibited areas in the interests solely of security or public safety.

---

[1] *Official Records of the United Nations Conference on the Law of the Sea*, vol. III, 8th, 37th and 55th meetings; vol. II, 14th plenary meeting.

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

[3] *Official Records of the General Assembly, Eleventh Session, Supplement No. 9*, p. 13. Commentary on article 3, para. 7.

14. The representative of Ceylon had asked at the 15th meeting what were the precise terms of treaties concluded with Powers, including France, which upheld the three-mile rule; certain of those treaties, he had said, seemed to specify territorial waters having a breadth of nine miles. In reply, Mr. Gros cited article 15 of the Treaty of 1886 between France and Mexico, under which the rule of twenty kilometres, the breadth which the parties regarded as the limit of their territorial sovereignty, would be applied only for the purposes of exercising customs supervision and would not be applied in any way in any other question of international maritime law.[4]

15. Furthermore, positive law, as it stood at present, recognized no contiguous zone for the purposes of fishing. According to Gidel,[5] it was only through the application of international agreements that the coastal State could take measures beyond the limits of its territorial sea to ensure respect for its fisheries interests. The coastal State accordingly had no fishing rights, whether exclusive, preferential or even special, beyond its territorial sea.

16. That was the present position in positive law; it was possible, it was true, to modify it, but only by the normal process of international law, in other words by agreement. The advocates of the contiguous fishing zone themselves acknowledged that, as was proved, in particular, by an official article published in Canada,[6] in which it was specifically stated that what was required was the formulation of a new rule of international law.

17. He felt bound to point out that the expression " historic rights " meant nothing. The only thing historic about it was the coastal States' eagerness to colonize the high seas. The States which practised distant fishing fished in the high seas and it was incorrect to speak of " historic rights " in that connexion.

18. Dealing with the economic and technical aspects, he said it was an incontrovertible fact that certain States depended entirely or almost entirely on fishing. Theirs was a special situation, which required separate treatment. On the other hand, some of the States which urged a twelve-mile fishery limit did not claim that they really needed it to feed their people, and many of them did not engage in fishing themselves; they merely wished to debar others from fishing in those waters except under licence. What was the use of going to Rome and at the FAO Conference seeking the best methods of co-operation towards a better supply of food for all, when what was proposed at the present Conference revealed a dogmatic hostility which was unreasonable and economically injustifiable, since it was detrimental to an effective organization of fishing and contrary to the idea of peaceful coexistence. In France there were 50,000 small fishermen whose business interest could hardly be called " monopolist ", and whose level of living, like that of millions of consumers, was at stake.

19. The French delegation was, however, giving an earnest of its spirit of compromise in supporting the United States proposal. It would be prepared to accept the new six-mile rule, abandoning its traditional three-mile rule and losing the right to fish freely in the belt contained between the three-mile and six-mile lines off foreign coasts. It would recognize as a new rule of international law the new principle of a contiguous fishing zone in which coastal States would enjoy preferential, but not exclusive fishing rights. It would accept the idea that the principle of the freedom of the seas — which gave to all in the past an indefeasible right — should in the future be qualified by restrictions, which would benefit the coastal State, concerning the species of fish which could be taken and the amount of the annual catch.

20. The French delegation had shown a similar spirit of compromise on the earlier occasion when it had accepted the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas, which had established in article 7 a new rule of international law: the right of the coastal State to make regulations for the conservation of the fish resources in high seas areas adjacent to the territorial sea.

21. It had been said that it would be difficult or impossible to enforce limitations affecting fishing by foreign fishermen in the coastal belt between the six-mile and the twelve-mile lines. In answer to that argument he would say that, for example, the dates of the departure and arrival of the thirty-three French fishing boats operating in the waters off Canada were known and so was the size of the catch. In reality, only one of two possible situations could arise: either, as in the case of the French fishing fleet to which he had referred, the fishing was organized and statistics concerning it were available, such as those published by the International Commission for the Northwest Atlantic Fisheries; or else the fishing off the shores of a coastal State was sporadic, and hence of minor importance, in which case the two States should have no difficulty in working out an agreement, the fishing State being unable to make a claim that its annual catch was high since there were no statistics and the catch had been made by only a few boats.

22. The advantage of the United States proposal was that it gave equitable treatment to the population of the coastal State and to the seafarers of fishing States. The realities which should be borne in mind were the steady growth of the world's population and its ever-increasing needs for food. It was bad to swim against the current, but worse to mistake the current's direction. In the view of the French delegation the right solution would be not to extend proprietary rights in parts of the sea — a course which was unnecessary to satisfy the needs of the State and which would harm the international community — but to promote the development of the fishing industries in the interests of all peoples.

23. Mr. SHUKAIRY (Saudi Arabia) said that, in taking its historic decision on the proposals before it, the Conference, while keeping in mind the interests of the international community, should not betray national interests, particularly those of the new States. The proposals should be examined to see how far they tended towards the progressive development of international law, and how far they struck a balance between

[4] *Laws and Regulations on the Régime of the Territorial Sea* (United Nations publication, Sales No.: 1957.V.2), p. 756.

[5] Gilbert Gidel, *Le droit international public de la mer*, vol. III, *La mer territoriale et la zone contiguë* (Paris, Librairie du Recueil Sirey, 1934), p. 473.

[6] *External Affairs*, Monthly Bulletin of the Department of External Affairs, Canada, vol. XII, No. 1, January 1960, pp. 439-440.

national and international interests. Opinion in the Conference was divided between those who supported a six-mile limit and those who supported a twelve-mile limit for the territorial sea. If both sides refused to give way it would be a triumph for no one and a defeat for all. Supporters of the twelve-mile rule, as well as those who favoured the six-mile rule, should keep an open mind and be prepared to yield to reason, logic and common sense.

24. In introducing the proposal of the United States (A/CONF.19/C.1/L.3), that country's representative had stressed the difficulties in regard to visibility, anchorage and air and sea navigation that were bound to arise if the territorial sea were to be extended to twelve miles. Those difficulties were not exclusive to a twelve-mile limit, nor were they inherent in it. The United States objections applied with equal validity to the six-mile limit. At any point off the coast the meteorological changes and the geographical configuration created the same universal hazards. Evidence of that fact, should it be needed, was to be found in the great network of navigational aids established even within the three-mile limit.

25. Every phase of human progress had brought in its wake many problems which had at times appeared, on the surface, to be insuperable. Innovation of any kind necessarily caused hardship and sacrifice. The industrial revolution, for example, had not been without adverse social and economic effects, yet it had never been advocated that industrial progress should be halted. It was no argument to suggest that, because of certain difficulties, the use of the territorial sea should not be expanded and that the exploitation of its resources should not be extended. On the contrary, having increased their scientific knowledge, the coastal States should not be prevented from using their coastal waters up to twelve miles in their best interests — to feed their people, to raise standards of living and to alleviate conditions of misery, disease and poverty all over the world. The financial and technical burden to which the United States representative had alluded need not be borne by every State. Each State could choose, in accordance with necessity and capacity, to fix the breadth of its territorial sea at any point up to twelve miles, and had the right to change, from time to time, its delimitation within that maximum. The twelve-mile limitation was neither mandatory nor immediate, but the right to such a limit should become part of the law of nations.

26. The United States proposal had been described as a departure from the traditional three-mile rule and it had been said that, should it fail to command the necessary majority, all the supporters of that rule would revert to their old positions. The Conference could not allow itself to be forced into a retrograde step. It had been proved at the 1958 Conference that the three-mile rule no longer existed. At no time had it been universally recognized or even tacitly accepted. Since then, further study of state practice, case-law and treaty precedents had confirmed that never since the concept of the territorial sea had emerged had there been a generally accepted rule of international law delimiting its breadth. The three-mile limit was often referred to as a minimum, but there were other limits of sixty miles, one hundred miles, two, three or four leagues; and it was significant that the various limitations were frequently ignored by their very exponents. So chaotic had the situation been, in fact, that already in the eighteenth century the Italian jurist Azuni had proposed that the maritime Powers should hold a conference and conclude a treaty on the subject.

27. Replying to the representative of France, he referred to a number of instances, from the seventeenth century onwards, in which the opinions of eminent French jurists or the actions of the French Government had admitted or advocated varying limits of more than three miles.

28. In reply to the representative of Italy, who had said that Anzilotti's views did not support the conclusions put forward by the Saudi Arabian delegation at the 1st meeting of the Committee, he referred to Oppenheim's statement that " Anzilotti . . . considers that no rule of international law has been developed to take the place of the abandoned 'shore batteries' rule ".[7]

29. The United Kingdom representative had said that the holding of the present Conference would be meaningless if international law already recognized a twelve-mile territorial sea. That contention could, however, be countered by the argument that, had the three-mile limit been recognized law, the Conference would not in that event have been convened. The representative of the United States had stated that the United States adhered, and had always adhered, to the three-mile limit, and for that reason would continue to do so if no agreement was reached by the Conference. Should that statement be well-substantiated, it would no doubt carry great weight in support of the United States proposal. Examples of official declarations and state practice taken from the United States archives revealed, however, that the three-mile limit was only one of many measurements of the breadth of the territorial sea, and that on the strength of those United States official documents there was not, and never had been, any fixed breadth of the territorial sea.

30. The United States representative had said that the three-mile limit had been adopted by the United States of America in 1791. It had, in fact, been in 1793 that Thomas Jefferson, addressing himself to the British and French Ministers,[8] had suggested that before it was finally decided to what distance from its sea shores the territorial protection of the United States should be exercised, it would be " proper to enter into friendly conferences and explanations with the powers chiefly interested in the navigation of the seas on our coasts " and found it necessary in the meantime to fix a distance provisionally, stating that " very different opinions and claims " had been advanced on that subject. Jefferson had said that the greatest distance to which " any respectable assent among nations " had been given had been " the extent of the human sight, estimated at upwards of twenty miles "; and that the smallest distance claimed by any nation was " the utmost range of a cannon ball, usually stated at one sea league ". The character of its coast would entitle the United

[7] L. Oppenheim, *International Law: A Treatise*, vol. I, *Peace*, 8th ed., H. Lauterpacht (ed.) (London, Longmans, 1955), p. 490, note 2.

[8] John Bassett Moore, *A Digest of International Law*, vol. I (Washington, U.S. Government Printing Office, 1906), p. 702.

States " to as broad a margin of protected navigation as any nation whatever ". President Jefferson, after reserving the ultimate extent for future deliberations, had set the distance " for the present " at " one sea league or three geographical miles from the sea shores ". The statement of Thomas Jefferson, in fact, demolished the case presented in the United States proposal, and was rather an argument in favour of the Soviet Union's proposal, since a twelve-mile maximum was modest in comparison with twenty miles.

31. Under General Assembly resolution 1105 (XI), the 1958 Conference was to examine the law of the sea " taking account not only of the legal, but also of the technical, biological, economic and political aspects of the problem ". Since the time when the concept of the territorial sea had been evolved — when the delimitation of the sea had been determined by the will of the principal maritime Powers — a large number of States had come into being. At The Hague Conference in 1930 forty-two States had been represented, whereas at the present Conference eighty-eight States were represented. To become part of the law of nations, a rule of law must be made by all the nations. Agreement among the maritime Powers alone was not law. That explained why the new nations were striving to set the limits of their territorial seas at twelve miles. Since they had achieved their freedom they had rejected the delimitation that had been made on their behalf when their land and sea had been subject to foreign domination.

32. The representative of the United Kingdom, supporting the United States proposal, had claimed that security based on the extension of the territorial sea was a misconception, that under modern conditions of warfare a wide belt of waters was not a suit of armour, and that a wider limit would be costly and difficult to control. Those assertions were neither valid nor relevant. Each sovereign independent State was the best judge of its own interests and should not be told how to achieve its security. Even taken simply as advice, the words of the United Kingdom representative were hardly consistent with deeds. The United Kingdom had always considered its defence to be not within its territory, whether on land or sea, but in Europe, Africa and Asia. Was it too much for the small States to seek their security within their coastal sea? A wider territorial sea meant a wider zone of security. It was a belt of peace in time of war, since belligerent States could not conduct military operations within the territorial seas of other States. A twelve-mile limit would therefore expand the area of peace and contract the high seas which were the battlefield in time of war.

33. In regard to shipping, the United Kingdom representative had said that even a six-mile limit would involve great sacrifice for the United Kingdom, and that a twelve-mile limit would cause heavy loss and damage. The use of such terms assumed that the United Kingdom and other States sharing its views were the owners of the high seas, for surely a thing could be sacrificed only if it were possessed. That was no longer true, however. The high seas belonged to all and it was for all to define them.

34. The same representative had also emphasized the importance of distant-water fishing to the United Kingdom, and had said that the loss of the fish it produced would be a cruel blow to the British economy. But, just as the United Kingdom had adapted itself in a remarkable manner to the changing situation as members of the British Empire became independent, so, as a fishing State, would it have to adjust itself to the emergence of the coastal States asserting exclusive fishing rights within their coastal waters. With goodwill there was, of course, room for free co-operation between the fishing States, which had the experience and the equipment, and the coastal States, which had the fish within their territorial sea. One thing must be certain, however: there should be no more fishing fleets within the waters of the coastal States without the explicit agreement of those States. In spite of the assertion of the United Kingdom representative to the contrary, that kind of distant-water fishing was, in the main, a relic of imperialism and colonialism and, as such, it should cease.

35. The coastal peoples, particularly those of underdeveloped countries, had no spirit of ill-feeling or selfishness. They needed the food that the fish of their coastal waters would give them, and they needed to catch and process their own fish, and build up their own fishing industry, so that they would not have to reimport fish at great expense. The United Kingdom representative had condemned the Canadian proposal for its injustice in depriving the fishing States of their " rights "; but was it an act of justice to meet the demands of fishermen and their families and to deny those of millions of people around the world for economic development, social betterment and food, food which lay only within a few miles of their coasts? In the final analysis, it was that human factor which should influence the Conference's course of action. A proposal fixing the breadth of the territorial sea at twelve miles would be consistent not only with state practice and security, with political and psychological considerations, but with the needs and interests of humanity. In supporting a twelve-mile limit, Saudi Arabia had no desire to inflict injury or hardship upon anyone. The interests of the Arab States, based on geography and history, were no less vital than those of any of the great Powers represented at the Conference. The shores of the Arab States extended from the Atlantic to the Persian Gulf, and included the Gulf of Aqaba, which was under the exclusive jurisdiction of Saudi Arabia, the United Arab Republic and Jordan. At the same time, despite the importance of their natoinal interests, they were not unmindful of the interests of the whole civilized community. It was their sincere conviction that their position was in keeping with the needs of the international community and with law.

36. Mr. GARCIA ROBLES (Mexico) referred to the question which the Ceylonese representative had asked the representatives of the United States and the United Kingdom at the 15th meeting, and to his own statement at the 10th meeting in which he had given the works in which the Spanish and English texts of the bilateral treaties with Mexico could be found. It was very useful that the French representative had cited the French text of one of those treaties: that concluded between Mexico and France in 1886. The provisions of that treaty, in whatever language, bore out what the Mexican representative had previously said — namely, that sovereignty was fully recognized over the territorial sea

to the distance of twenty kilometres reckoned from low-water mark, which the Contracting Parties had agreed to consider as the limit of the territorial jurisdiction of their respective coasts. The Parties had, however, voluntarily limited that sovereignty by a phrase reading:

> " Nevertheless, this rule shall only be applied for the carrying out of the custom-house inspection, the observance of the custom-house regulations, and the prevention of smuggling; but on no account shall it apply to the other questions of international maritime law." [9]

The treaty between Mexico and the Domunican Republic, signed on 29 March 1890, contained a similar clause.[10] It should be noted that of the thirteen treaties regarding the Mexican territorial sea which he had mentioned in his statement, five were still in effect, and four of them did not stipulate any such restriction on sovereignty. The most notable example was article 5 of the 1848 Treaty of Guadalupe Hidalgo in which it was stated that: " The boundary line between the two republics shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande." [11]

37. Mr. GROS (France) pointed out that as the treaty referred to by the Mexican representative had been concluded and signed in French, the French text was authentic. The Mexican representative was perfectly free to interpret it as he thought fit, but the French delegation maintained its interpretation, since the meaning of the text in French left no room for dispute.

The meeting rose at 6.30 p.m.

[9] *Laws and Regulations on the Régime of the Territorial Sea* (United Nations publication, Sales No.: 1957.V.2), p. 756.

[10] *Ibid.*, p. 759.

[11] *Ibid.*, p. 745.

TWENTY-FIRST MEETING

Friday, 8 April 1960, at 11.30 a.m.

Chairman: Mr. José A. CORREA (Ecuador)

Consideration of the questions of the breadth of the territorial sea and fishery limits in accordance with resolution 1307 (XIII) adopted by the General Assembly on 10 December 1958 *(continued)*

GENERAL DEBATE *(continued)*

Statements by Mr. Dean (United States of America), Mr. Drew (Canada), Mr. Caabasi (Libya) and Mr. Rafael (Israel)

1. Mr. DEAN (United States of America) said that, in response to what had proved to be the overwhelming desire of the States taking part in the Conference, the delegations of Canada and the United States of America had withdrawn their separate proposals (A/CONF.19/C.1/L.3 and L.4) and were now submitting a joint proposal (A/CONF.19/C.1/L.10) on behalf of the two Governments. The new proposal on the breadth of the territorial sea and fishery limits had been worked out in consultation with the delegations of both coastal and fishing States to meet the widely recognized need for a single proposal capable of securing the overwhelming support of the Conference.

2. The joint proposal provided for a maximum limit of six miles for the breadth of the territorial sea, and for an exclusive fishing zone contiguous to the territorial sea, extending twelve miles from the baseline. It would also permit foreign States whose nationals had made a practice of fishing in the outer six-mile zone during the five years preceding 1 January 1958 to continue to do so for a period of ten years from 31 October 1960.

3. The two Governments believed that the proposal would meet the wishes of coastal States, especially those of the newer countries, whose desire to obtain exclusive fishing jurisdiction over a zone extending for twelve miles from their coasts had long been viewed with sympathetic concern by the Canadian and United States Governments. The United States Government wished to thank the many delegations which had expressed support for its original proposal, and to state that the withdrawal of that proposal had been prompted by its earnest search for an acceptable balance between the interests of all nations with regard to the law of the sea, and thus to promote the success of the Conference. The work of the first United Nations Conference on the Law of the Sea and the discussions of the past three weeks had progressively narrowed the probable area of final agreement, and the proposals submitted to the present Conference had clearly indicated the kind of compromise needed to secure the necessary two-thirds majority. It seemed plain, for instance, that no proposal permitting a twelve-mile territorial sea would command such support, whereas the new joint proposal would, in his view, satisfy the immediate needs and future aspirations of coastal States, while at the same time protecting foreign fishing from unnecessary or precipitate injury, and would therefore have an appeal wide enough to ensure its adoption by the Conference. In submitting the proposal, he wished to pay a tribute to the unselfish efforts of the delegations which had helped to make the compromise possible, especially those of Canada, Pakistan, Australia, Norway and Brazil.

4. He emphasized that the United States Government was making two important concessions in agreeing to impose a time-limit on foreign fishing rights within the six-to-twelve-mile zone, and in agreeing to a period of ten years only for the continuance of such rights. For countries, like his own, which fundamentally preferred to keep a three-mile limit for the territorial sea without a contiguous fishing zone, the joint proposal went much more than half way towards meeting the countries that advocated a territorial sea twelve miles wide. With regard to fishing jurisdiction, the concession was almost complete, or would be so after a relatively short lapse of time.

5. He drew attention to the fact that, when the territorial sea was extended from three to six miles, the area of territorial waters increased in geometrical proportion, while the presence of islands, each surrounded by its own territorial sea, also added greatly to the over-all