Second United Nations Conference on the Law of the Sea

Geneva, Switzerland
17 March – 26 April 1960

Document:-
A/CONF.19/C.1/SR.21

Twenty-First 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)*

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

area of off-shore jurisdiction. Even in the case of the United States of America, which had relatively few off-shore islands, an extension of the breadth of the territorial sea from three to six miles would increase its area from 17,300 to 37,500 square miles. Using a straight baseline, as agreed upon at the first Conference, the presence of deep indentations and associated off-shore islands would allow a further appreciable sea area to be incorporated as an integral part of a State. Thus, a six-mile territorial sea, measured from a straight baseline, might take away from the existing high seas a zone averaging four, five or six miles in breadth.

6. The simplicity of the new joint proposal should commend it to those delegations which had foreseen practical difficulty in giving effect to certain of the provisions of the original United States proposal. If various amendments suggested to the original United States proposal had not been incorporated in the joint proposal, it was not because they had not been found worthy but only because the new text seemed to contain all the necessary ingredients of a compromise formula according to the general view. His delegation believed, however, as it had stated earlier, that the case of special situations where there was overwhelming dependence on fisheries within the twelve-mile zone merited the sympathetic consideration of the Conference. The new text did not specifically mention bilateral or multilateral fishing agreements. It had been assumed that the final instrument would include an article similar to article 25 of the 1958 Convention on the Territorial Sea and the Contiguous Zone, to the general effect that conventions or other international agreements already in force would not be affected by it. As regards future instruments, the establishment of the basic rights of the coastal and fishing States in the fisheries zone, as provided for in the joint proposal, would not *ipso facto* settle all the fisheries problems in that zone, since they varied from place to place. The principles set forth in the joint proposal would need to be implemented by such bilateral or multilateral arrangements as would permit them to be applied in an orderly and practical manner. Since the compromise involved sacrifices on the part of both fishing and coastal States in the interests of agreement, his Government believed for that very reason that arrangements for implementation should be negotiated in a spirit of mutual accommodation and goodwill.

7. The date of 31 October 1960, from which foreign fishing rights in the outer six-mile zone were to run for ten years, had been chosen because the Conventions adopted by the first Conference had been signed on 31 October 1958.

8. He did not underestimate or undervalue the fact that the joint proposal involved a sacrifice of fundamental principle and of large economic and human proportions for those States, like his own, whose nationals had for generations fished areas of the high seas up to the three-mile limit; but without such sacrifice no international agreement could be reached at the present Conference. He would similarly remind those States which would prefer to see a shorter period laid down for the continuance of foreign fishing in the outer zone that, in the view of nearly all delegations, it would be unfair, for the sake of formulating a universal rule of law, to terminate abruptly existing fishing practices on the high seas on which countries, towns, villages, enterprises and human families were to some extent — in many cases a large extent — dependent. It was reasonable and just to allow a period for necessary adjustment. The ten-year period proposed, which was inadequate and deemed by some unnecessarily harsh, could not be subject to reduction. Both sponsors were in fact agreed that it should not be subject to alteration in either direction. He hoped that the States which stood to benefit greatly by the new rule would exercise restraint, in order to lighten the burden of fishing States upon whom it would fall heavily. He pointed out that in many cases exclusive coastal-state jurisdiction would be granted immediately, owing to the absence of any foreign fishing in the outer zone. He hoped that the coastal States for which the rule would involve some present sacrifice would come to realize that, without some concession on their part, no agreement would be possible at the present Conference.

9. The United States delegation sincerely believed that, with reasonable flexibility on the part of the countries concerned, and with a thoughtful regard for the success of the Conference and the rule of law, the joint proposal could bring the present efforts of all delegations to a fruitful conclusion.

10. Before concluding, he wished to inform the Committee that the four Conventions and Optional Protocol adopted at the first Conference had been favourably reported out to the United States Senate by the Senate Foreign Relations Committee.

11. Mr. DREW (Canada) said that his delegation had withdrawn its own proposal (A/CONF.19/C.1/L.4) in order to join the United States delegation in presenting a compromise text, in the hope that it would offer a basis for agreement. As he had stated at the 5th meeting, the original Canadian and United States proposals had sought to attain the same objective, the only important difference between them having been in their treatment of the problem raised by distant-water fishing already long established. His delegation had never suggested that an abrupt end should be put to such fishing, but had consistently maintained that, given the variable factors involved, the matter could best be dealt with under bilateral or multilateral agreements that took into account the different interests of the parties. On the other hand, the United States delegation had originally proposed that such rights be exercised in perpetuity where fishing had been carried on for at least five years prior to 1 January 1958.

12. During the discussion a number of representatives had expressed the hope that the two proposals would be reconciled so as to establish common ground for supporters of a six-mile territorial sea and an additional six-mile fishing zone. That purpose had now been achieved in the new joint proposal (A/CONF.19/C.1/L.10), which represented the kind of compromise that made international agreements possible.

13. The Conference had been convened to draw up legal rules governing two specific matters only, and the general desire to reach agreement on those two issues of the law of the sea still to be codified might well be frustrated if there were any attempt to broaden the scope of the discussion beyond the Conference's terms of reference. Nevertheless, his Government was anxious to recognize

the special problems of States particularly dependent on fishing for the livelihood of their peoples, to which workable and adequate safeguards to protect their fishing resources were important.

14. The first two paragraphs of the joint proposal were identical with the original Canadian proposal. The third paragraph provided that States which had been engaged in distant-water fishing in the waters of other States for the requisite period might continue to do so for another ten years. That provision, designed to meet the views expressed during the discussion about the need for a period of adjustment, did not change the fundamental thesis originally advanced by the Canadian delegation, and constituted a considerable concession by the two sponsoring delegations. He would like here to pay a tribute to the way in which the United States delegation had helped to find a solution.

15. As in the case of the United States delegation, his own would naturally have preferred its original proposal, and had agreed to propose a period of ten years in the belief that that would be the maximum acceptable to States supporting the original Canadian proposal and the minimum acceptable to those which would have favoured the original United States text. The discussions had clearly shown that the figure could not be regarded as a bargaining counter. It represented a compromise which he believed was reasonable in all the circumstances, and which he hoped would receive general support.

16. One very important consideration to be borne in mind was that there was virtually unanimous agreement that there should be a fishing zone of up to twelve miles from the baseline. The wide divergence of opinion that persisted related to the delimitation of the territorial sea. He earnestly appealed to countries which, for one reason or another, had adopted a territorial sea of more than six miles not to refuse categorically and in any circumstances to reduce that width. There was overwhelming evidence to support his contention at the 5th meeting that, in the majority of cases, States which had extended their territorial sea to twelve miles had done so for the sole purpose of asserting control over fishing at a time when the concept of a fishing zone had not been accepted, and when such an extension had provided the sole means of establishing such authority. Full control over fishing would now be acquired through the rights conferred in the fishing zone. Surely, therefore, there could be no question of conceding any established rights in accepting the narrowest territorial sea supported by the overwhelming majority of those countries which owned and operated the peace-time air and sea transport of the world.

17. Canada was one of the many countries engaged in peaceful navigation by sea and air which still adhered to a three-mile territorial sea. It would have greatly preferred to see that limit maintained, but in an effort to reach a compromise had indicated its willingness to extend it up to the maximum reasonable figure. With the adoption of a twelve-mile fishing zone, every State would possess the means of essential fisheries control without impairing the freedom of the high seas. Surely six miles was more than enough for the territorial sea. In no conceivable circumstances could his Government be regarded as an aggressor, and it was convinced that the territorial sea beyond six miles offered no advantage from the point of view of defence under modern conditions, but would conversely limit the freedom of navigation and impose unnecessary burdens on coastal States.

18. In conclusion, he expressed his gratitude for the extremely useful suggestions made by representatives from every part of the world both in the Committee and in private discussion. Those States seeking agreement in terms of a narrow territorial sea with a contiguous fishing zone offering every measure of control which did not interfere with the freedom of the high seas had already made a great concession in accepting an extension of the territorial sea from three to six miles. As the representative of one of the younger, and certainly one of the most peace-loving, nations, he urged others to meet it half way so as to demonstrate to the world that the eighty-eight countries represented at the Conference were not divided by arbitrary barriers or doctrinaire views, but were prepared to reach agreement in order to further the prosperity, peace and security of mankind.

19. Mr. CAABASI (Libya) said that the International Law Commission's statement that international law did not permit an extension of the territorial sea beyond twelve miles [1] deserved the closest attention. Two schools of thought had been ably defended in regard to the delimitation of the territorial sea and the fishing zone. The first was upheld mostly by the maritime Powers, which maintained the three-mile limit but were ready to compromise by extending the breadth of their territorial sea to six miles, and by accepting a twelve-mile fishing zone with or without exclusive fishing rights. The second had been championed by States advocating a breadth for the territorial sea of up to twelve miles, with exclusive fishing rights within the same area. Both groups were seeking to safeguard national security and the living resources of their coastal waters, and neither aimed to exceed a twelve-mile limit for either the territorial sea or the fishing zone, thereby tacitly endorsing the International Law Commission's conclusion. The only divergence of view lay in whether or not all nations should establish a single uniform limit for the territorial sea.

20. His delegation supported the principle contained in article 1 of the sixteen-Power proposal (A/CONF.19/C.1/L.6).

21. His delegation could not support article 3 in the original United States proposal, and commended article 7 of the sixteen-Power proposal which was not designed to protect so-called historic rights but allowed for the regulation of matters of common interest.

22. Off-shore fishing was being developed in Libya as one of the most productive sources of revenue and as an economic resource both for internal use and for export. Though the territorial sea had been established at twelve miles by act of Parliament, foreign fishing vessels were continually and illegally entering the territorial sea to fish and to put down sponge divers. Those were the tangible considerations which had led his Government to extend the territorial sea up to twelve miles, action which accorded with the International

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

Law Commission's opinion that "... in all cases where the delimitation of the territorial sea was justified by the real needs of the coastal State, the breadth of the territorial sea was in conformity with international law".[2]

23. The two conferences on the law of the sea convened by the United Nations had opened a new epoch in the progressive development of international law. For the first time a great number of countries, old and new, great and small, were participating in the elaboration of a complete set of international rules. The diversity of national interests between the advanced and the less advanced countries should not be allowed to stand in the way of better mutual understanding and the adaptation of the rules of international law to modern conditions.

24. Mr. RAFAEL (Israel), exercising his right of reply to remarks made at the previous meeting, said that it was unnecessary to reiterate well-known geographical and historic facts. Israel was one of the four coastal States on the Gulf of Aqaba, and its position remained the same as that stated by its Foreign Minister in the United Nations General Assembly on 1 March 1957.[3]

The meeting rose at 12.30 p.m.

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

[3] *Ibid., Eleventh Session,* 666th plenary meeting.

TWENTY-SECOND MEETING

Friday, 8 April 1960, at 3.30 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 *(concluded)*

Statement by Mr. Glaser (Romania)

1. Mr. GLASER (Romania) recalled that his country advocated a breadth of twelve miles for the territorial sea; his delegation's decisions on the various proposals before the Committee would accordingly be determined on that factor.

2. It should be emphasized from the outset that the aim was not to make the twelve-mile breadth obligatory, but to sanction the right of every State to extend the breadth of its territorial sea up to a maximum of twelve miles. The dangers which some speakers had summoned up were imaginary, as was proved by the fact that the seventeen States that had already adopted the twelve-mile limit were highly satisfied with it.

3. It had also been argued that if every State was free to adopt any breadth it chose, provided only that it did not go beyond the twelve miles, the ensuing lack of uniformity would lead to chaos. But there had never been a uniform rule governing the breadth of territorial waters. The territorial sea was the offspring of the needs of international life — of the interests of coastal States. Those interests varied from State to State, and even from time to time, as geographical, geological, historical and other circumstances varied. In support of that contention, he quoted Mr. Scelle, according to whom attempts to establish a uniform and common breadth for the territorial sea had always proved fruitless,[1] and Mr. Gidel, who concluded that there were no rules of international law fixing the extent of the adjacent waters.[2] That was why the so-called three-mile rule could never in the past be a general rule or one that could be made binding on all States.

4. Even the States which advocated a breadth of three miles did not always adhere to that principle in practice. Italy and France provided cases in point. The Italian representative at the Codification Conference held at The Hague in 1930 had stated that the three-mile principle was not in keeping with the demands of modern life, and that it was far from universally applied.[3] The Italian law No. 612 of 15 June 1912 had empowered the Council of Ministers to prohibit, in certain circumstances involving international security, the passage or anchoring of merchant ships less than ten sea miles from the Italian coast. France had on several occasions established a six-mile zone prohibited to foreign warships (Decrees of 1912, 1927 and 1929). So long ago as 1817 a law had fixed the limit of supervision for control purposes by the French customs authorities at twenty kilometres from the coast. If the principle of the freedom of the high seas precluded a coastal State's exercise of its sovereign powers beyond a limit of three miles, how were those unilateral acts to be explained?

5. In the absence of a rule, it was clear that States had been, and still were, entitled to lay down a limit of more than three miles for the breadth of their territorial sea. Experience revealed that the maximum limit practised was twelve miles. Neither the International Law Commission nor the most eminent jurists had ever been able to affirm that there was a rule prohibiting an extension of the maximum limit to twelve miles. But that which was not forbidden was permitted. Moreover, practice was tending to develop in the same direction. The leader of the United States delegation had himself explained to the Foreign Relations Committee of the United States Senate on 20 January 1960 that if no agreement was reached at the Second United Nations Conference on the Law of the Sea, state practice would move towards the establishment of a breadth of twelve miles for the territorial sea. The very conditions of international life called for the adoption of the twelve-mile rule so imperatively that even those who advocated six miles had been obliged in certain cases to recognize twelve. For example, no one contested a coastal State's right to extend its control over a twelve-mile breadth of sea in matters of immigration, public health, taxation, customs and fisheries. On the other side, it was certain that the twelve-mile limit in no way impaired the freedom of the high seas, since all vessels other than war-

[1] Georges Scelle, *Plateau continental et droit international* (Paris, A. Pedone, 1955), p. 53.

[2] 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. 152.

[3] League of Nations publication, 1930.V.16, p. 135 and 136.