

# **Second United Nations Conference on the Law of the Sea**

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**A/CONF.19/C.1/SR.22**

## **Twenty-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)*

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".<sup>2</sup>

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.<sup>3</sup>

The meeting rose at 12.30 p.m.

<sup>2</sup> *Ibid.*, p. 13.

<sup>3</sup> *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,<sup>1</sup> and Mr. Gidel, who concluded that there were no rules of international law fixing the extent of the adjacent waters.<sup>2</sup> 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.<sup>3</sup> 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-

<sup>1</sup> Georges Scelle, *Plateau continental et droit international* (Paris, A. Pedone, 1955), p. 53.

<sup>2</sup> 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.

<sup>3</sup> League of Nations publication, 1930.V.16, p. 135 and 136.

ships enjoyed the right of innocent passage. To those who had invoked the difficulties that a coastal State's exercise of its civil and criminal jurisdiction over a sea area twelve miles wide would entail, he would reply that there was no reason why the difficulties should be greater for a breadth of twelve miles than they were for the prevailing breadths of three, six or nine miles of territorial waters.

6. There remained the question of the freedom of navigation of foreign warships. The refusal of the western maritime Powers to recognize the twelve-mile rule was, in fact, determined solely by that aspect of the question of the freedom of the sea. If the breadth of the territorial waters was extended to distances of up to twelve miles, the warships of certain maritime Powers would no longer be able to cruise off the shores of other States to assist and support their countries' foreign policy, as the United States representative had put it before the Senate Foreign Relations Committee. Mr. Glaser emphasized that such a policy of force was no longer admissible, and was contrary to Article 2, paragraph 4, of the Charter of the United Nations. Moreover, under General Assembly resolution 1378 (XIV), States Members had recognized the need for general and complete disarmament, which would mean the disappearance of warships. There was therefore no need to prevent the Conference from reaching agreement on the twelve-mile limit simply in order to safeguard the passage of warships.

7. Those who advocated the twelve-mile rule on grounds of national security had been told that it was meaningless in the nuclear age. He would point out that most States had no nuclear weapons, so that for them the territorial sea could be a true pledge of security. Furthermore, recent experience showed that there was reluctance to embark upon a nuclear war, "localized" wars being preferred. Lastly, it was undeniable that in time of war an enemy could force his way into the territory of a State whatever the breadth of its territorial waters. It was in time of peace that the breadth of the territorial sea was important, for the twelve-mile breadth unquestionably made for security, in that it enhanced the difficulties of parachute landings, espionage, sabotage, etc. In any event, each sovereign State was the sole judge of its own security requirements.

8. Turning to the alleged "historic rights", he associated himself with what the representatives of Saudi Arabia, Tunisia and Peru had said. On the one hand there was the country that had hitherto exercised the right to fish near the coast of another country; on the other hand there was the coastal State whose people had not been able to exercise the right to fish near their own coasts — not through inherent inability, as some alleged and as was stated in an article on the law of the sea published in 1958,<sup>4</sup> but because they had been prevented from doing so by the poverty and ignorance in which the yoke of colonialism had kept them.

9. It had been said that an extension of the limit to twelve miles would not attract fish to the waters involved. To that he would reply that if there had been no fish in those waters there would have been no so-called

<sup>4</sup> Julien Le Clère, "Le droit de la mer, création exclusive de la race blanche", *Journal de la marine marchande et de la navigation aérienne*, 40th year, No. 1996.

"historic rights", because there would have been no fishing there in earlier times. He would remind the Committee that reference was made in article 1 of the draft international covenants on human rights<sup>5</sup> to the question of the right of peoples to self-determination; that implied the right of a State to dispose for itself of its natural resources, including its fishery resources.

10. In the present context he wished to draw attention to a contradiction in the statements made by the Canadian representative, who at the Committee's 5th meeting had shown, without rebuttal, that the recognition of "historic rights", far from reconciling conflicting interests, would be inequitable, and at the previous meeting had affirmed that to recognize the lawfulness of historic rights constituted a compromise.

11. The Romanian delegation was convinced that the problem could be solved only by adopting the twelve-mile rule. The six-mile formula was not a realistic one and had only been proposed with a view to securing a sufficient majority against those States which supported the twelve-mile rule with responsibility for the possible by its sponsors, as a genuine solution: it was simply a lesser evil and an attempt to burden those who advocated the twelve-mile rule with responsibility for the possible failure of the Conference. But the question of the breadth of the territorial sea could not be solved by procedural methods and by manipulated majorities. It could only be solved if all States reached an agreement, and to that end the situation should be considered from a realistic point of view. If that were done, it would be seen that it was in the interests of States to adopt a breadth of up to twelve miles for their territorial sea. In Mr. Glaser's view, the controversy was but part of the eternal and universal struggle between the old and the new; on the present occasion, as always, the victory of the new could be obstructed and delayed, but it could never be prevented.

12. The CHAIRMAN declared the general debate closed.

The meeting rose at 4.30 p.m.

<sup>5</sup> See *Official Records of the Economic and Social Council, Eighteenth Session, Supplement No. 7*, p. 65.

## TWENTY-THIRD MEETING

Monday, 11 April 1960, at 10.50 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)

### CONSIDERATION OF PROPOSALS (A/CONF.19/C.1/L.1, L.2/REV.1, L.5, L.7 TO L.11)

1. Mr. RUEGGER (Switzerland) said that he must explain briefly the principles upon which his delegation's vote would be based. In order to ensure respect for international law, all ambiguity and any elements that