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Twenty-Third Meeting of the Committee of the Whole

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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,[4] 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 "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 convenants on human rights[5] 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.

[4] 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.

[5] 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

might give rise to disputes similar to those which had unfortunately arisen in the past, should so far as possible be eliminated. The aims of the Swiss delegation were still virtually the same as those it had expounded at the first United Nations Conference on the Law of the Sea. It wished for the greatest possible freedom over the greatest possible areas of the sea, which was *res communis*. It earnestly desired an agreement with the widest possible support, which might give a new and necessary impetus to efforts for the progressive codification of international law. Obviously, sacrifices would be necessary. A genuine demonstration of the willingness to make them had been the withdrawal of earlier proposals by certain delegations and the submission of a new draft.

2. The proposals before the Committee dealt with the problems of the breadth of both the territorial sea and the contiguous zone. The latter primarily concerned the great maritime Powers which enjoyed its fishing, but all countries, even those without sea coasts, were concerned with the former problem, that of the breadth of the territorial waters and the régime of the air-space superjacent. There was a very real difference between the right of innocent passage, which might be suspended if the coastal State considered it necessary for reasons of security, and the absolute right of free navigation in the high seas. The extension of territorial waters beyond the classic three-mile limit, or the six-mile limit which the majority of States now seemed ready to accept, to twelve miles would fundamentally after the map of the high seas. To go into the delays and disputes of all kinds which might be entailed, to the detriment of the users of the seas, would be otiose. Switzerland was a considerable user of the seas, not so much in the number and tonnage of the ships flying its flag, as in the volume of its imports and exports carried by sea. As a user of the seas, it favoured the solution which seemed to it the most liberal, and the one which departed least from the traditional one. It would therefore vote for the proposal which did not provide for an extension of the territorial waters beyond six miles, that submitted jointly by the Canadian and United States delegations (A/CONF.19/C.1/L.10).

3. Any decision taken by the Conference on territorial waters would have an undoubted and lasting effect on the superjacent air-space. The question might be asked whether the Conference, which had been convened to codify existing international law or to propose new international law to the States, was entitled to commit States for the future in a field that concerned them all, whether coastal States or not, since increasingly they regarded air transport as destined to cover a large part of their trade. The right of free air navigation over the free high seas was one of the basic elements of the law of the sea, reaffirmed and codified with admirable clarity in the 1958 Convention on the High Seas. Air-space was also *res communis*. It had been argued that in practice there would be no impediment to air transport, owing to existing agreements, in particular the 1944 Chicago Convention on International Civil Aviation and the broad network of bilateral agreements dealing with civil aviation. Undoubtedly, such agreements were necessary and useful, but there was obviously a substantive difference between agreements limited in space, and sometimes in time, and accompanied by reservations and basic regulations and the situation likely to arise if the breadth of the territorial sea were extended. By extending territorial waters, the territory of the coastal state was extended in law, and there was not in international law *ipso facto* a right of flying over " territories ". He agreed entirely with the opinion expressed by the representative of Australia on that point at the 11th meeting.

4. Where the Icelandic proposal (A/CONF.19/C.1/L.7) was concerned, the Icelandic delegation would no doubt have been sensible of the great sympathy evoked by its explanation of the difficulties of safeguarding a national economy based almost entirely on fishing. The legal formulation of that proposal, however, raised considerable doubts. It might be possible to amend the proposal, unless the solution of Iceland's special problem was to be found in the Canadian and United States proposal. He would like to draw attention to a suggestion made in 1959 by Mr. Philip Jessup at the American Society of International Law that international assistance might be given to the Icelandic fishermen in their difficult struggle for a livelihood. Surely it would not be too bold to broaden that idea and to make provision, during or after the present Conference and through appropriate machinery, for joint action by the international community for all hard-pressed fishermen, regardless of their origin, to help them cope more effectively with contemporary conditions and any new situations which might arise from a change in international law.

5. In general and for reasons of principle, the Swiss delegation welcomed the system for peaceful settlement of disputes set out in paragraph 4 of the Canadian and United States proposal. For the kinds of dispute covered by that paragraph the procedure contemplated, which was that outlined by the International Law Commission in draft articles 51 to 59 on fishing and the conservation of the living resources of the high seas,[1] seemed appropriate. But for other kinds of dispute which might arise out of the application of the agreements which the Conference hoped to prepare there should, if possible, be compulsory reference to arbitration or to the international judicial settlement or, failing that, as a minimum, power to extend to the new agreements the rules of the 1958 Protocol. It would be most desirable that even States which were not yet prepared to accept compulsory arbitration or judicial settlement should all undertake regularly to refer disputes to conciliation commissions. Finally, precisely in the area of the law of the sea the Conference was attempting to codify, as wide use as possible should be made of commissions of inquiry. In regular resort to such commissions, which had been successfully developed in international practice over half a century, lay their best hope of seeing the rule of law established over the sea.

6. Mr. HARE (United Kingdom) regretted withdrawal of the original United States proposal (A/CONF.19/C.1/L.3) since it had been, in the opinion of his delegation, the fairest and most balanced proposal tabled at the Conference. The United Kingdom had been willing to accept the sacrifices which that proposal would have imposed upon it because it wanted the Conference to

[1] *Official Records of the General Assembly, Eleventh Session, Supplement No. 9*, p. 10.

succeed, and it knew that to be impossible unless all were prepared to make real concessions.

7. The proposal originally tabled by Canada (A/CONF./19C.1/L.4), which had also been withdrawn, had been unacceptable to the United Kingdom, as indeed to other States with established distant-water fisheries, because it would have placed in jeopardy overnight the livelihood of countless people. The new joint proposal by Canada and the United States (A/CONF.19/C.1/L.10) went some way towards removing that injustice. In putting forward their joint proposal, the delegations of Canada and the United States had given clear evidence of a true spirit of compromise.

8. He could not pretend to like the new proposal. Ten years was far too short a time for the distant-water fishermen to adapt themselves to the consequences of being shut out of fishing grounds within the twelve-mile zone where they had fished for generations. It was too short a time to amortize vessels and equipment, too short for fishermen to acquire the new skills, knowledge and capital equipment that would certainly be needed. If traditional rights had to disappear, a period of fifteen to twenty years would have been far more just.

9. If the joint proposal was carried, it would mean that the United Kingdom and many other countries would have to shoulder a much greater burden of sacrifice than under the original United States proposal. As an illustration of what that involved in the case of the United Kingdom, he would cite the latest relevant figures. The British trawler owners, as a gesture of goodwill and in the hope of contributing to a successful outcome of the Conference, had decided to withdraw their ships entirely from the waters round Iceland, which were of particular importance at that time of year. In the first week in which the full effect of the withdrawal was felt, total distant-water landings of fish, when compared with the average for the same period over the last four years, were down by 27 % at Hull, 61 % at Grimsby and 89 % at Fleetwood, the principal distant-water fishing ports. That must mean less food for the British people and hardship for the fishermen. The ten-year period in the joint proposal would help the fishing States to reduce hardship; it most certainly would not eliminate it. The United Kingdom delegation had reluctantly accepted the fact that the ten-year period proposed was the only one which could bring together those who wanted a longer period and those who wanted a shorter period or none at all. It would therefore vote for that proposal. It emphatically agreed with the sponsors of the proposal, however, that if the length of the period was subsequently to be whittled away, the whole basis of the compromise would be destroyed.

10. It should also be clearly understood that the jurisdictional rights of the coastal State in the outer six-mile zone must be exercised in such a way that the special fishery rights given by article 3 of the proposal were not frustrated or impaired. During the ten-year period, the distant-water fishing State must be allowed to continue fishing in the same way as in the past. At the 20th meeting the representative of Saudi Arabia had said that the United Kingdom, as a fishing State, would have to adjust itself to the assertion of the coastal States' exclusive fishing rights within their coastal waters. The new joint proposal provided for precisely that situation, since it gave the fishing States a ten-year period in which to adjust the pattern of their fishing, and he accordingly trusted that the representative of Saudi Arabia would support the proposal.

11. Several speakers had tried to connect traditional fishing practices with colonialism. That was a myth which must be laid to rest. Nearly all the dependent territories of the United Kingdom would be affected by the result of the Conference. Their interests differed widely, some being largely dependent on fishing off the coasts of neighbouring States, while others had neighbouring States fishing off their own coasts. The majority would gain immediate exclusive fishery jurisdiction whatever the decision of the Conference, because no other country had ever fished anywhere near their coasts. But in no case had any colonial Power made a practice of fishing in a six to twelve-mile zone off those territories. It was therefore not the so-called colonial Powers who would benefit from the temporary fishing rights that a few of those territories might have to concede.

12. The proposal tabled by the delegation of Iceland (A/CONF.19/C.1/L.7) was precisely the same as the one that had been put before the Conference in 1958,[2] and rejected.[3] It continued to give rise to a number of uncertainties. First, preferential rights would be given to " a people " overwhelmingly dependent upon the coastal fisheries for its livelihood or economic development. If the expression " a people " meant any coastal fishing community that looked to the sea for its livelihood, it would apply very widely, because there were communities of that kind everywhere. Secondly, who was to decide whether the catch in the adjacent high seas needed to be limited, and were scientific conservation needs to be the sole grounds for such a decision ? Thirdly, what were the criteria for deciding the preferential rights that were to be given ? Iceland's proposal did not answer any of those questions. It mentioned only the interests of the coastal States and was silent on the interests of others.

13. The situation was fundamentally different from when the proposal first came forward in 1958. Then it was being considered against the background of a six-mile exclusive fishery limit, whereas, under the present joint Canadian and United States proposal, after a very short time the coastal States would enjoy exclusive fishing within a twelve-mile zone. Moreover, under the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas, those States would be able to take care of conservation requirements beyond the twelve-mile zone. Surely coastal fishing communities in general could feel that their essential interests would be safeguarded ? If it could be assumed that Iceland's proposal was meant to relate only to the very few countries whose economies were overwhelmingly dependent on their fisheries, different questions arose. If there were enough fish for all within the contiguous zone during the proposed ten-year period, there would seem to be no case for preferences; but if there were not enough fish, consideration could be given to some limitation of distant-water fishing. The United Kingdom delegation

[2] See *Official Records of the United Nations Conference on the Law of the Sea*, vol. V, 39th meeting, paras 36-56.

[3] *Ibid.*, vol. II, 15th plenary meeting, paras. 4-52.

would, therefore, be ready to consider the claims of such countries for preferential treatment within the twelve-mile zone during the ten-year period.

14. The United Kingdom was not unsympathetic towards the special situation of the few countries which were overwhelmingly dependent upon fisheries for their livelihood. In 1958, three countries had been generally recognized as being in that category — Iceland, the Faroes and Greenland. Greenland was sparsely peopled and her coastal waters were rich in fish. There would be more than enough fish for the local fishermen throughout a ten-year period and for many years to come. The Faroese fishermen had operated for years past all over the North Atlantic — off Iceland and Greenland and elsewhere. Iceland had a highly developed fishing industry with a large and modern fleet, including large trawlers equipped to operate far afield. Her fish catch had almost trebled over the past 20 years, and the catch per head of population had doubled in that time, so that there was obviously no critical fishery situation for Iceland.

15. Fishermen of other nations, as well as the United Kingdom, fished in the high seas adjoining Iceland, beyond the proposed fishing zone. But leaving the United Kingdom out of the argument, what of the Faroese fishermen, and the Belgian fishermen who fished there ? Belgium was a small country with a population about forty times that of Iceland but with only a very short coast line, off which it could not hope to find more than a small part of the fish it needed. Special situations could apply to fishery States as well as to coastal States. Preferential fishing in the high seas beyond the jurisdiction of the coastal State was, therefore, a subject which bristled with complications. The case for such preferences, even for those who were especially dependent upon the fisheries, was not so obvious as some seemed to think, and grave injustice could easily arise.

16. The joint proposal before the Conference was a confirmation of the willingness of many nations to make real concessions in order to reach a solution. It seemed, however, that the readiness to make concessions had so far been confined only to those nations who had joined in supporting a six-mile territorial sea with an adjacent six-mile fishing zone. There had been no move, no concession, no sacrifice so far on the part of those who had supported a twelve-mile régime. Such a one-way traffic of ideas could certainly cause the breakdown of the Conference and defeat the hopes of all who genuinely sought to strengthen international law. If the spirit of the United Nations was to prevail, those countries which had so far made no move towards a compromise should do so. All nations, large or small, ancient or new, had responsibilities as well as rights.

17. Mr. DE LA PRADELLE (Monaco) said it was difficult to disentangle the law of the sea from the accretions imposed by national sovereignty. He hoped that one day the compromise formulae produced by the " diplomacy of the sea " would give place to a true law of the sea, in harmony with the Charter and offering all the possibilities of peaceful solution which the Charter provided: arbitration, judicial settlement, and inquiry. The real solution of the problem of the territorial sea would be to delimit the territorial sea of the coastal State from the high seas, which were the public domain of mankind. Institutions which at present had only an advisory competence, such as general organizations like the Inter-governmental Maritime Consultative Organization, and the numerous scientific and fisheries commissions of a regional nature, like the International Commission for the Scientific Exploration of the Mediterranean, would be raised to the higher level of legislative, administrative and supervisory bodies. For the time being, the proposals before the Conference obviously represented only a first stage in such a development.

18. So far as concerned the width of the territorial sea, his delegation urged that the sacrifice offered unilaterally by the supporters of the traditional three-mile rule should not be frustrated by further political manoeuvres. The six-mile limit, or any other width proposed in order to reach a compromise, should be so defined as to exclude any interpretation which might allow a State to extend that limit. His delegation would not like the Conference to provide the occasion for a new wave of encroachments on the freedom of the seas by the coastal States. It drew attention to the happy precedent of the Washington Conference in December 1959, on the status of the Antarctic, which had decided to " freeze " for the duration of the treaty the claims advanced by twelve Powers to the territory of the fifth continent now devoted to scientific research.

19. Of all the formulae suggested for fixing the maximum width, he preferred the one to be found in the original United States proposal (A/CONF.19/C.1/L.3).

20. As regards the contiguous fishing zone, his delegation would be glad if the Conference agreed to recognize the perfect legitimacy, in equity, and the legality, in law, of a guarantee, for an unlimited period, of individual and community fishing rights acquired, in the outer six-mile zone, by the prolonged exercise of an essential freedom of the sea.

21. The feebleness of some of the arguments advanced against those rights, rights which had been improperly described as historic, was striking. The argument, allegedly based on equity, which drew a contrast between the poverty of the coastal populations and the profits of the foreign fishing concerns, was contradicted by the reports of the Fisheries Division of the Food and Agriculture Organization of the United Nations. While it was just that special situations like that of Iceland should be taken into account, the interests of the coastal States should be given only prior, not exclusive, consideration. The geographical argument, based on rights of proximity, was equally unsound. The most that geography gave was not rights but a favourable position for acquiring them. The " legal " argument which evoked the recently proclaimed right of the permanent sovereignty of peoples and of nations over their natural wealth and resources made light of the conditions to which the General Assembly had subjected recognition of that right. A perusal of resolution 1314 (XIII) would show that, for recognition of that sovereignty, the General Assembly required that it should be effective and that due regard should be paid to the rights and duties of States under international law, and to the importance of encouraging international co-operation in the economic development of under-developed countries.

22. A sample survey of international jurisprudence would provide cogent support for acquired rights in the high seas in the zone, from three to six miles from the coast, adjacent to the deep waters, a zone which provided a veritable fish preserve for non-coastal fishing interests. Cases in point were those of the German minorities in Poland and the Anglo-Norwegian fisheries. They showed that private rights acquired in accordance with existing law did not lapse in consequence of a change of sovereignty and could legitimately be taken into accounts. His delegation therefore considered that, in reserving fishing rights acquired in the high seas in accordance with international legislation on the freedom of the high seas, which remained unchanged, the compromise solution mentioned was in accordance not only with equity but with international law as well. The delegation of Monaco would support the proposal which offered the best guarantee for the future exercise of the traditional freedom of the seas, and which respected the rights of fishing communities acquired in accordance with international law.

23. Mr. TUNCEL (Turkey) observed that after three weeks of general discussion, the Committee at last had before it some realistic proposals; it would have been preferable had they been submitted earlier, for then it would have been unnecessary for delegations to express their views on texts which were only provisional.

24. The Turkish delegation welcomed the joint Canadian and United States proposal (A/CONF.19/C.1/L.10) which provided a useful basis for further discussion. The proposal was, of course, a compromise, and as such was bound to have certain defects and to entail some sacrifices, but it was acceptable to his delegation. There was, however, one comment which his delegation would like to make concerning the fishing zone. Paragraph 2 set forth a definite principle, according to which the coastal State would have in the fishing zone the same rights in respect of fishing and exploitation of the living resources of the sea as it had in its territorial sea; but paragraph 4 implied that the provisions of the Convention on Fishing and Conservation of the Living Resources of the High Seas would apply after the transition period had expired. In order to eliminate that anomaly, the word " paragraphs " at the end of paragraph 4 should be put in the singular, to make it clear that the provision applied only to the transition period.

25. Furthermore, since it seemed unlikely that certain States would change their stand even if the Conference adopted a decision contrary to their positions, the Turkish delegation would like to recommend consideration of the reciprocity clause contained in article 4 of the sixteen-Power proposal (A/CONF.19/C.1/L.6). Where the Turkish delegation was concerned, it was prepared to approve the principle of reciprocity as set out in the text of the article in question.

26. Until the joint Canadian and United States proposal had been introduced, his delegation had viewed the Icelandic proposal (A/CONF.19/C.1/L.7) with some sympathy. He now submitted, however, that the Canadian and United States proposal seemed to meet the condition in the third paragraph of the commentary on the Icelandic proposal expressed in the terms that " a zone of twelve miles from the baselines goes a long way in taking care of the Icelandic requirements ". He would like to have the views of the delegation of Iceland on that point.

The meeting rose at 12.35 p.m.

TWENTY-FOURTH MEETING

Monday, 11 April 1960, at 3 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)*

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

1. Mr. GARCIA ROBLES (Mexico), speaking on behalf of the sponsors, introduced the eighteen-Power revised proposal (A/CONF.19/C.1/L.2/Rev.1). It was not a new proposal, but a combination of the two earlier ones submitted respectively by Mexico (A/CONF.19/C.1/L.2) and by sixteen African and Asian countries (A/CONF.19/C.1/L.6), both of which had been consequentially withdrawn.

2. Article 1 of the revised proposal was identical with the corresponding provisions of both the original proposals. It proclaimed the right, existing in customary international law, of every State to fix the breadth of its territorial sea up to a limit of twelve nautical miles; that twelve-mile maximum breadth permissible under international law had been implicitly but unequivocably recognized by the International Law Commission.

3. The flexible formula provided in the revised eighteen-Power proposal was the only one which offered any prospect of a freely agreed settlement on the breadth of the territorial sea, because it alone of the proposals before the Committee corresponded to the prevailing situation in the national legislation of different coastal States. Moreover, it satisfied the legitimate rights, claims and aspirations of the coastal State without in any way impairing the freedom of maritime or air navigation.

4. The provisions of article 2, which dealt with fishery limits, had also been common to both the original proposals. The original Mexican proposal, however, had introduced an innovation by seeking to establish a fisheries zone whose extent would vary inversely with that of the territorial sea. That idea had been put forward in the hope that such a genuine system of compensation would induce many of those States which had not yet extended the breadth of their territorial sea, not so much to renounce their right to fix that breadth up to a maximum of twelve miles, but rather to abstain voluntarily from exercising it, at least for some time to come. Had it met with a favourable reception, the innovation might in many cases have led to the establishment of a territorial sea six miles broad or even less;