Second United Nations Conference on the Law of the Sea

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Twenty-Fourth 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)*

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;

but it had been rejected, explicitly or implicitly, by the representatives of the maritime Powers, whose statements made it abundantly clear that they were seeking not merely a narrow territorial sea but a narrow fisheries zone as well. The Mexican delegation had therefore decided that there would be no point in continuing to press its suggestion, and had reverted to the formula first submitted to the 1958 Conference by Mexico and seven other countries of Latin-America, Africa and Asia,[1] which closely resembled that embodied in articles 2 and 3 of the original sixteen-Power proposal submitted at the present Conference (A/CONF.19/C.1/L.6).

5. Article 3 was substantially the same as article 4 of the sixteen-Power proposal and embodied the principle of reciprocity, which had been so aptly propounded by the Indonesian representative at the 14th meeting. Its purpose was to make sure that a State which fixed the breadth of its territorial sea or contiguous fishing zone at less than twelve miles did not find itself at a disadvantage vis-à-vis other States which adopted a twelve-mile limit.

6. The terms of article 4 were identical with those of the first part of article 3, paragraph 1, of the original Mexican proposal (A/CONF.19/C.1/L.2). As he had pointed out at the 10th meeting, the idea embodied in article 5 was not merely academic but had been put into practice by Mexico by the promulgation of the decree of 22 February 1960; as he had then observed, that course could certainly be followed by other countries, which would thereby be making a decisive contribution to the elimination of the deplorable fishing incidents which, particularly in recent years, had been all too frequent in the territorial seas of several countries, including Mexico.

7. Article 5 of the revised proposal was identical with article 7 of the original sixteen-Power proposal. It would make it possible for States which had made a practice of fishing in distant waters to conclude mutually satisfactory agreements with a coastal State without detracting from the latter's exclusive fishing rights under articles 2 and 3 of the new proposal. It was in that way and not by recognizing so-called " historic rights " that the interests of all concerned could be reconciled to the general benefit.

8. Article 6 of the revised proposal reproduced, with certain drafting changes, article 5 of the sixteen-Power proposal which had originated in a suggestion made by the Philippines delegation. The unshakable legal and historical grounds on which that provision rested had been described by the Philippines representative at the 5th meeting.

9. The Mexican delegation believed that, in addition to being constructive and moderate, the revised proposal which he had just introduced had the outstanding merit of facing up to the legal and political realities of the second half of the twentieth century; it further believed that its flexibility, its realistic approach and the spirit of equality and justice which inspired it would enable the proposal to make a genuine contribution to the progressive development of international law.

10. Turning to the joint proposal submitted by Canada and the United States of America (A/CONF.19/C.1/L.10), he said that it was totally unacceptable to the Mexican delegation in that it sought to establish a territorial sea six miles broad.

11. In that connexion, he recalled the many questions asked, and the many observations made about the thirteen treaties which had been concluded by Mexico with other countries between 1848 and 1908 and which contained provisions relating to the breadth of the territorial sea.

12. He did not wish to repeat the many arguments he had advanced at the Committee's 10th meeting against a six-mile territorial sea. He wished to add, however, a further and particularly important one: the legal status of the territorial sea was identical with that of the land domain, for the State was sovereign over it. It flowed naturally from that doctrine that the coastal State alone was entitled to exercise all existing and future rights over that sea, subject to no limitation whatsoever other than the obligation to allow innocent passage to foreign merchant ships in the manner prescribed by international law. He could therefore not agree with the statement that the provisions of the 1958 Convention on the Territorial Sea and the Contiguous Zone, combined with the prerogatives of the exclusive fishing zone, would give the coastal State the same rights as those held in the territorial sea. In fact, the provision in question covered only customs, fiscal matters, immigration and public health; if fisheries were added, there would still be no provision for the security of the coastal State or for economic interests other than fisheries which might subsequently come to light.

13. For instance, it would have seemed incredible fifty years ago that it would become possible to exploit the petroleum resources of the continental shelf at considerable dephts below the surface of the sea. In similar fashion, technological progress might make it possible to develop hitherto unsuspected resources in the sea belt lying between six and twelve miles from the coast. If delegations to the Conference accepted the principle of a territorial sea six miles broad, their countries would have no future title to protect their interests in such resources, since they would have renounced their sovereign rights over that belt of the territorial sea. Only by clinging to their sovereignty over it could they later claim any rights in that regard; the retention of separate powers in respect of customs, fiscal matters, immigration, public health or fisheries would not be enough.

14. Referring to paragraph 3 of the Canadian and United States proposal, dealing with the case of States whose vessels had made a practice of fishing in the outer six miles of the fishing zone, he pointed out that, although the sponsors no longer sought to establish a right in perpetuity, since the provision in question laid down a time-limit of ten years from 31 October 1960, the limitations on species of fish caught and size of catch which had appeared in article 3 of the original United States proposal (A/CONF.19/C.1/L.3) had been abandoned. He recalled in that regard that at the first Conference the Canadian representative, speaking on the United States proposal [2] — a proposal which was similar in that respect

[1] *Official Records of the United Nations Conference on the Law of the Sea*, vol. II, annexes, document A/CONF.13/L.34.

[2] *Ibid.*, document A/CONF.13/L.29.

to the joint proposal (A/CONF.19/C.1/L.10) now before the Committee — had described the effect of the absence of any limitation on the size of catch in the following terms:

> " The effect of the United States proposal would be very different. It made no attempt to protect established fishing rights in the measure to which they were at present exercised. If that proposal were adopted, the fact that a few small vessels had fished in certain waters for a period of five years would allow the fishing of a coastal State's waters to be extended to any number of craft wherever the original right could be established. The new nations would be helpless to protect their own waters, and would never acquire any fishing rights elsewhere." [3]

15. Lastly, it was rather odd that the joint proposal by Canada and the United States of America should have been presented as a conciliatory and compromise proposal. It was obvious that nothing that could be even remotely described as negotiations had yet taken place. There had been conversations between the advocates of two variants of the same school of thought, but another very important point of view had been completely ignored, as though it did not exist. The Mexican delegation believed that that procedure was mistaken: a struthious attitude was no substitute for a constructive policy. If the work of the Conference was to be fruitful, and its results acceptable to all, it was essential that the legal and material realities be taken into consideration. He feared that, if any other approach were adopted, it would be only too possible when the Conference closed to describe its labours as " ploughing the sea ".

16. Mr. SUCHARITAKUL (Thailand) said that his delegation had refrained from taking part in the general discussion, not for lack of interest in the questions under discussion, but because it had wished to hear the views of other Governments.

17. His Government had sent a delegation to the first United Nations Conference on the Law of the Sea in 1958 in a spirit of conciliation and co-operation, believing that only a compromise reached in such a spirit could reconcile the conflicting interests of coastal and non-coastal States. It had also maintained that, if fishery limits were made separate from and broader than those of the territorial sea, some States might find it unnecessary to extend their territorial sea beyond six miles. Out of consideration for the interests both of those States which adhered to the three-mile rule and of those which advocated a broader territorial sea, his Government had expressed its preference for a six-mile territorial sea and a twelve-mile fishing zone, measured from the same baseline. He recalled, too, that the delegation of Thailand had urged the General Assembly of the United Nations, at its thirteenth session, to convene a second conference on the law of the sea as soon as possible, emphasizing the need for a uniform and generally accepted rule governing the breadth of the territorial sea and fishery limits.

18. After careful reconsideration of those two questions in the light of the discussions at the first Conference, and in that of subsequent consultations with several other countries, the opinion of his Government remained the same as before. His Government believed that, with the resources at present available to it, it would be unable to exercise effective control over a territorial sea more than six miles broad. Moreover, if all territorial seas were extended to twelve miles and coastal States chose to exercise full control over vessels passing through their territorial waters, shipping costs could not fail to rise.

19. His delegation therefore considered that the Canadian and United States joint proposal (A/CONF.19/C.1/L.10) provided a reasonable compromise between the traditional three-mile limit and the twelve-mile territorial sea proposed by some delegations. The ten-year period during which fishing States would be allowed to continue to fish in the outer zone also seemed to make a fair allowance for the adjustments that would have to be made in the fishing industries of the countries concerned. His delegation would therefore support that proposal. It reserved the right to speak again on the new proposals more recently submitted to the Conference.

20. Mr. O'KEEFFE (Ireland) said that his delegation, being anxious for the Conference to achieve success, was prepared to make concessions to that end. Though Ireland was not a " new " country in the sense in which that term had been generally used during the discussion, it had gained its freedom less than fifty years ago, and had known " colonialism ". It did not favour a broad territorial sea, finding a belt of three miles measured from the applicable baseline adequate for its purposes. Mindful of the duties, as well as the rights, which the possession of property entailed, his government was unwilling to assume the additional responsibilities that would ensue from a wider territorial sea. That attitude was not altogether disinterested: failure to discharge such additional duties might involve the country in peril greater than that likely to arise with a narrower territorial sea.

21. His Government welcomed the new concept of an exclusive fishing zone and had had no difficulty in supporting the original Canadian proposal [4] in 1958. Irish fishermen did not fish near the coasts of other States, but foreign fishermen did fish off Ireland's coasts. But his Government appreciated the position of its European neighbours, which would be most affected by an extension of Ireland's fishing zone to twelve miles, and had consequently also found it possible in 1958 to support the United States proposal,[5] which had mustered the greatest number of votes. With those considerations in mind, he welcomed the present compromise proposal put forward by Canada and the United States of America (A/CONF.19/C.1/L.10), and paid a tribute to its authors for their efforts to devise a suitable formula that would satisfy the fundamental desire of younger States, including his own, for wider jurisdiction for fishing purposes.

22. It might not be fully realized that the proposal offered immediately exclusive fishing rights up to six miles and, if desired, a six-mile territorial sea. Where straight baselines were applicable, jurisdiction would be more extensive. The immediate exercise of exclusive fishing rights in a zone up to twelve miles broad would

[3] *Ibid.*, vol. II, 14th plenary meeting, para. 29.

[4] *Ibid.*, vol. III, annexes, document A/CONF.13/C.1/L.77/Rev.1.

[5] *Ibid.*, vol. II, annexes, document A/CONF.13/L.29.

be subject to but a single limitation, and that for a period of ten years only. He doubted whether coastal States would be able within a shorter period to develop their national fishing potential to a stage where they could exploit the outer six miles adequately, and hoped that they would examine the compromise most carefully to see whether it did not in fact entirely meet their needs.

23. He recognized that the establishment of an exclusive fishing zone would have serious repercussions on the economy of the fishing States, and that a decade might seem scant for the necessary economic and social adjustments. But he urged such countries to make their contribution to the success of the Conference by accepting the compromise so laboriously worked out. After all, there would still be the possibility of negotiating bilateral agreements under which the zones in question could continue to be exploited beyond the ten-year period, as the Canadian representative had pointed out when introducing his original proposal at the Committee's 5th meeting. The Irish Government was against permitting an extension of the territorial sea up to twelve miles. Ireland's merchant navy and international airlines were expanding, and his Government agreed with certain others that such an extension might make it necessary to lengthen sea and air routes and create other unpredictable difficulties.

24. Ireland was ready to consider sympathetically any reasonable concession to countries like Iceland, the population of which was overwhelmingly dependent for its livelihood on fishing, but he doubted whether the Icelandic proposal (A/CONF.19/C.1/L.7) would command support as it stood.

25. Mr. DREW (Canada) wished to correct an impression created by the Mexican representative which was capable of causing an unfortunate misunderstanding. Mr. Drew's statement at the first Conference, referred to by the Mexican representative, bore no relation whatever either to the position of the United States delegation as set forth at the present Conference or to the joint proposal (A/CONF.19/C.1/L.10) before the Committee. The entirely different proposal Mr. Drew had referred to at the first Conference had been replaced by the new joint proposal which was couched in clear and explicit terms, particularly with regard to the rights of fishing States in foreign coastal waters. He also repudiated the suggestion that the joint proposal had been submitted without due negotiation. Negotiations with other countries, including Mexico, had been going on over the past two years, and many useful suggestions had been received from various parts of the world. Although Canada's position differed greatly from that of the United States of America on many fundamental issues, the two countries were accustomed to discuss their differences in a friendly manner, and the present joint proposal was the outcome of such friendly negotiation. It represented a broad compromise between different positions, and had been submitted in the sincere hope that it would command the requisite two-thirds majority.

26. It was his belief that the original Mexican proposal (A/CONF.19/C.1/L.2) had been submitted, not with the intention of attracting serious consideration, but to provide a breathing space until it became possible to agree upon a formula such as that presented in the eighteen-Power proposal (A/CONF.19/C.1/L.2/Rev.1).

27. The Canadian delegation had waited in vain for some sign that countries like Mexico, with a territorial sea more than six miles broad, were prepared to match the concession already made by the countries which would prefer to keep to the three-mile territorial sea. Although numbered among the latter, Canada was ready to accept a six-mile limit, though it would thereby incur an obligation to patrol and supervise more than 125,000 additional square miles of sea. But it had no desire to extend that area any further, since it fully intended to discharge in full its various obligations with regard to its territorial sea. He had so far heard no convincing argument in support of the repreated claim that a wider territorial sea was necessary for defence purposes, and in his opinion a twelve-mile fishing zone, taken in conjunction with the provisions of the four Conventions adopted by the first Conference, afforded a country every right it could conceivably desire, while at the same time retaining the freedom of the seas and imposing no unnecessary burden on coastal States.

28. He would remind delegations that, in accepting the invitation to attend the present Conference, they had assumed an obligation to try to reach common ground, and not to stand firm by positions repeatedly stated over the years. Concessions on both sides alone could enable the Conference to prove that, despite political and other differences, it was yet possible to reach agreements on matters so intrinsically peaceful and essential to human welfare as the freedom of the seas and the right to fish.

29. Mr. GARCIA ROBLES (Mexico) wished to repeat briefly three points to which the Canadian representative had omitted to refer in his statements.

30. First, in comparing the joint proposal by Canada and the United States of America (A/CONF.19/C.1/L.10) to the original United States proposal (A/CONF.19/C.1/L.3), Mr. García Robles had pointed out that the former proposal, although it provided for a time-limit of ten years from 31 October 1960, no longer imposed any of the limitations on the species of fish caught or the size of catch which had originally featured in article 3 of the latter.

31. Second, on the question of negotiations, he had said that there had been conversations between the representatives of two variants of the same school of thought, but that another, very important point of view had been completely ignored, as though it did not exist. He was quite sure that all representatives well appreciated the true position in that respect.

32. Last, he wished to make it clear that, in the opinion of the Mexican delegation, the sum total of rights accruing from the exclusive fishing zone and the contiguous zone was not equivalent to the rights held by the coastal State in the territorial sea. The coastal State was sovereign in that area; the separate prerogatives relating to fisheries, customs, fiscal matters, immigration and public health were a completely different matter from sovereign rights, which covered the whole broad range of prerogatives subsumed under that concept. There was some analogy there with the difference between a limited right of usufruct and full property rights.

33. Mr. DEAN (United States of America) said that his delegation was always prepared to discuss any point with other delegations, and was anxious to lose no opportunity of doing so.

34. Replying to certain of the remarks made by the Mexican representative, he reminded the Committee that the United States proposal of 1958 had imposed no limitations as to the average level of catch of specific species. The limitations embodied in the United States proposal originally submitted to the present Conference (A/CONF. 19/C.1/L.3) had been introduced in response to suggestions made by various countries in the course of discussions held between the two conferences, but they had subsequently been criticized, notably by the representatives of India and Iceland, as too unwieldy. The representative of Ceylon, on the other hand, had found them unacceptable for countries in process of developing their distant-water fishing fleets. Similarly, conflicting views had been expressed about the time-limit which had been proposed for the exercise of certain established fishing rights with the object of meeting the desire of coastal States to reach a position that would enable them eventually to negotiate on an equal footing with fishing countries. Those were examples of the kind of problem encountered when trying to reconcile differing points of view.

The meeting rose at 4.55 p.m.

TWENTY-FIFTH MEETING

Tuesday, 12 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) *(continued)*

1. Mr. BARTOS (Yugoslavia) said he would first comment on the eighteen-Power proposal (A/CONF. 19/C.1/L.2/Rev.1). Articles 1 and 2 corresponded to the USSR proposal (A/CONF.19/C.1/L.1), and so faithfully reflected international juridical practice. According to the authors of the proposal, article 3 was designed to allay the fears of those delegations that considered that the ships of States which decided to retain a narrower territorial sea would be at a disadvantage in relation to the ships of States with a broader territorial sea. The effective reciprocity for which the text provided, and which was an increasingly frequent feature of contemporary treaties, ensured the absolute equality of sovereign States. That provision would certainly be helpful, for its effect could only be to restrain States which might be tempted to broaden their territorial sea for mere reasons of prestige rather than for the purpose of securing their frontiers or their economic independence. Article 4 was equitable, but at the stage the Conference had reached might give rise to a mistaken interpretation of the obligation under which foreign fishing interests were placed to observe the regulations of the coastal State. Only the coastal State was called upon to take action in its fishing zone in respect both of its own fishermen and of foreign fishermen. That was why the Yugoslav delegation had spoken against article 4 of the original United States proposal (A/CONF. 19/C.1/L.3). To avoid any unilateral interpretation of that provision, the authors should add a clause providing that the article in no way affected the right of the coastal State to apply sanctions in the event of a breach of its terms. As regards article 6, the best way of dealing with the question would be to keep to the resolution adopted in 1958 on the régime of historic waters,[1] especially since at its last session the General Assembly in resolution 1453 (XIV) had decided to consider the question.

2. Turning to the joint United States and Canadian proposal (A/CONF.19/C.1/L.10), he pointed out that even if one of the proposals before the Conference were adopted by a two-thirds majority, and even if the corresponding convention were ratified by two-thirds of the States participating in the Conference, the breadth of the territorial sea would still not be fixed universally by international law. There was no provision of international law whereby a rule established by agreement was binding on non-contracting States, so long as the juridical principle it expressed was not accepted, by reason of its universal application, as established juridical custom. In the present case, it appeared that, in the absence of such a contractual rule, the existing international practice would be maintained. On the subject of so-called historic rights, the Yugoslav delegation maintained its position. He noted with satisfaction that, so far as concerned the rights of foreign fishing interests in the fishing zone, the joint proposal took into account a number of objections which had been raised to the original United States proposal, but there were some other points he would like to mention.

3. First, an international easement was not acquired in five years. Comparative law taught that most legislations required twenty to thirty years for the acquisition of simple rural easements. For that reason the Argentine amendment (A/CONF.19/C.1/L.11) seemed more acceptable.

4. Secondly, he noted with satisfaction that the joint proposal did not mention the procedure provided for in the original United States proposal for the control of catches by the coastal State. That procedure would have been difficult and costly and liable at any moment to give rise to disputes. However, so long as paragraph 3 did not lay down the technical conditions in which foreign fishermen could engage in fishing, it was to be feared that, they might attempt, by intensive fishing to take unfair advantage of the limited period allowed.

5. As regards paragraph 4, he supported the Turkish representative's objection at the 23rd meeting that the provisions of the 1958 Convention on Fishing and Conservation of the Living Resources of the High

[1] *Official Records of the United Nations Conference on the Law of the Sea*, vol. II, annexes, document A/CONF.13/L.56, resolution VII.