Second United Nations Conference on the Law of the Sea

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Twenty-Fifth 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)*

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.

Seas could apply only to the disputes mentioned in paragraph 2, and not to those mentioned in paragraphs 1 and 2, as appeared from the provisions of the Convention relating to the composition and competence of the arbitration commission and the qualifications required of its members.

6. In reply to the argument based on the number of years required for the amortization of invested capital, the joint United States and Canadian proposal had the defect that it contained no provision covering the number and type of fishing vessels to be operated in the period during which fishing remained free. The absence of any such safeguard might encourage foreign fishing interests to make further investments and then, when their fishing rights were about to expire, to appeal on humanitarian grounds for further time to complete their amortization.

7. His delegation regretted that the Great Powers had not been successful in finding a universally acceptable text. Under the circumstances it would vote for the USSR proposal and, with the reservations mentioned above, for the eighteen-Power proposal, which it considered more complete.

8. Mr. VLACHOS (Greece) said he would first analyse the eighteen-Power proposal (A/CONF.19/C.1/L.2/Rev.1). Articles 1 and 2 differed from the USSR proposal (A/CONF.19/C.1/L.1) only in form. Article 3 introduced a new element, since it appeared to ensure reciprocity, but actually what it countenanced was the universally reprobated practice of retortion. The apparent reciprocity it introduced granted rights without imposing any obligation and would operate only to increase and not to reduce the claims of coastal States, since a State which had set its limit at less than twelve miles would be entitled, in its relations with another State, to increase the breadth of its territorial sea if that other State adopted a breadth greater than its own. To ensure real reciprocity, article 3 should read

> " A State, if it has fixed the breadth of its territorial sea or contiguous fishing zone at twelve nautical miles, will have the obligation vis-à-vis any other State with a narrower delimitation thereof not to exercise the same sovereignty or the rights stated in article 2 above beyond the limits fixed by that other State."

Even in that form, the Greek delegation would have been unable to accept the article in question, for the confusion resulting from it would prevent for ever the establishment of an intelligible map of the territorial seas. Furthermore, article 3 as thus drafted constituted an indirect admission that the twelve-mile limit was excessive, since a country which extended its territorial zone to twelve miles would lay itself open to reprisals.

9. Turning to the joint Canadian and United States proposal (A/CONF.19/C.1/L.10), he regretted that the original United States proposal had been withdrawn, for it was more in accordance with the permanent interests of the international community. The joint proposal was, however, the least remote from the position which Greece had adopted, for it preserved the freedom of the seas to the greatest extent possible and allowed fishing interests a time-limit, admittedly fairly short, in which to readapt themselves.

10. To those who maintained that the joint proposal was not compromise, he would reply that it was a compromise, not on detail, but on a principle: the exclusiveness of fishing rights in a contiguous zone. The United States had yielded on that point, and Canada had yielded on the quantitative limitation of fishing for a transitional period.

11. Consequently, the Greek delegation would vote for the joint proposal, since the withdrawal of the United States proposal left it no alternative; it did so, however, with great regret. During the last ten years, Greece had considerably increased its fishing potential and, whereas in 1950 ocean fishing had been unknown to Greek fishermen, large numbers of Greek trawlers now fished in the Atlantic. Within the next ten years, however, that system would have to be completely remodelled and adapted to new conditions.

12. Mr. DE PABLO PARDO (Argentina) introduced the Argentine amendments (A/CONF.19/C.1/L.11) to the joint Canadian and United States proposal (A/CONF.19/C.1/L.10). The amendments were as follows:

> " 1. To replace, in paragraph 3, the phrase ' for the period of five years ' by the phrase ' for an uninterrupted period of thirty years '.
>
> " 2. To insert the following new paragraph after paragraph 3, the old paragraph 4 becoming paragraph 5:
>
> " ' In any area of the high seas adjacent to its exclusive fishing zone the coastal State shall have a preferential fishing right, especially if its economic development or the feeding of its population depends on that activity.' "

13. The Conference should recognize the right to fish off the coasts of other countries, provided such fishing had been exercised uninterruptedly for a long period and provided a time-limit were set for its termination. The time-limit of ten years in the joint proposal was acceptable, although it might have been made somewhat longer to allow for cases where there might be difficulties in altering fishing gear. A base period so short as five years was, however, unacceptable, especially as, under the present wording, it might not even have been uninterrupted. Even the period of thirty years proposed in the Argentine amendment was somewhat short to establish a legal case that fishing had continued, but it might suffice as a compromise. It should be remembered that in legal tradition war was a classic case of *force majeure* and that should be taken into account when computing the uninterrupted period.

14. The Argentine delegation believed that explicit recognition should be given to the right, often exercised in practice, to a preferential share in fishing carried on in the areas of the high seas adjacent to zones regarded as exclusive fishing zones. In view of existing laws and regulations, for some States to accept such a preferential fishing right would be a considerable concession. The recognition of the special interest of coastal States in the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas and of the preferential needs of countries whose people were overwhelmingly dependent upon coastal fisheries for their livelihood or economic development, which in some cases amounted

to real vital necessities, and the legal provision made by several States for the regulation of fishing, militated in favour of the Argentine contention.

15. The wording of the new article 4 proposed by the Argentine delegation had been decided after appropriate consultations and was preferable to a more detailed clause. The amendment was moderate, from the point of view of the coastal fishing States, and it was hoped would attract support not only from coastal fishing States but also from countries engaged in fishing off distant coasts, if they really were actuated by a spirit of compromise. The opening words " In any area of the high seas adjacent to its exclusive fishing zone " had been taken from the Convention on Fishing and Conservation of the Living Resources of the High Seas, except that the term " exclusive fishing zone " had been substituted for the term " territorial sea ", because an exclusive fishing zone beyond the territorial sea had been provided for in paragraph 2 of the Canadian and United States proposal.

16. The " preferential fishing right " would not mean that a State would prevent other States from fishing, but that it would enjoy a preferential share in the fishing and the exploitation of the stocks of fish beyond the twelve-mile limit, especially where its economic development or the feeding of its population depended on such fishing. Coastal States were fully entitled to exploit to the greatest possible extent the stocks of fish in the areas of the high seas off their coasts. There was nothing to prevent other States, in principle, from fishing such waters as well, but the Conference should recognize at least a preferential right for coastal States in waters in which they had an actual or potential interest.

17. Obviously such a right could be invoked only in the future and could not be disregarded by the arbitral commission referred to in the last paragraph of the joint proposal. Time would show how the right was to be exercised and how it could be put into practice if its scope were disputed by other States.

18. The term " preferential " referred basically to the exploitation of stocks of fish. The volume of fishing at present depended on the capacity and efficiency of the gear used and would become subject to the conservation regulations of the 1958 Convention as soon as it came into force. Nevertheless, the right of coastal States to at least a given minimum share of the fishing should be recognized, with special regard to their needs for economic development or food. It should be quite clear that that meant the exercise of a power, which would, of course, depend on the material ability to exercise it, but not an exclusive prerogative of the coastal State over part of the fishing. The principle of the preferential right of coastal States to fish off their own coasts should not only be the basis of the regulations enacted by such States themselves, but also of any agreements concluded between them and other States, and of any decisions by the special arbitration commission.

19. The Argentine amendment had been drafted in general terms, like any statement of principles. It might be objected that the terms " economic development " and " the feeding of its population " were somewhat vague and might cause difficulties in interpretation; they were, however, accepted concepts, and referred to the criteria to be followed and the special situations to be taken into account. His delegation would welcome any constructive criticisms and any suggestions that would improve the wording.

20. Mr. QUARSHIE (Ghana) pointed out that no new proposals had been put forward for three weeks. The Canadian and United States compromise (A/CONF.19/C.1/L.10) had come both too soon and too late: too soon because the debate had been frozen in its initial stages, and too late because its earlier submission might have given the Conference a useful basis for discussion. Nevertheless, it was the first move in the right direction and it was to be hoped that the example it set would be followed by other delegations.

21. Those who advocated the six-mile limit for the territorial sea, with a six-mile fishing zone, argued that a six-mile territorial sea was adequate for all purposes and that an extension was unnecessary and unduly expensive; those who favoured the twelve-mile territorial sea were convinced that that limit was essential for their security and economic life. The divergence between the two views did not seem too great, since the common denominator of both was a greater or lesser measure of sovereignty over twelve miles of coastal sea. The Canadian representative had said that he had not heard a single convincing argument in favour of the twelve-mile limit; but he himself could say the same of arguments in favour of the six-mile limit. If it were deemed too expensive to carry out the duties imposed by a twelve-mile limit in a country with 2,000 miles of coast, that should not prevent countries with, say, 350 miles of coast from establishing such a limit. In fact, that argument was an indirect suggestion that a coastal State should subsidize the trade of a foreign State by making it possible for the foreign State to carry on its trade more cheaply. It was also argued that a twelve-mile limit would not ensure the security of the coastal State because of the greatly increased range of modern weapons; but newly independent States still felt safer with a broader territorial sea than with a narrower one. The high seas could certainly provide enough fish without making it necessary for foreign States to exploit the coasts of others; surely there was no need to reduce the breadth of territorial seas in order to save money for wealthy maritime States with well-equipped fishing fleets.

22. Ghana feared exploitation of its fishing resources and threats to its security; it sought a solution which would guarantee it a maximum freedom from exploitation and threats. Its fears could not be allayed by exhibitions of technical knowledge or outright dismissal of its views. In consultations, the main point often lay less in the validity of the argument itself than in the reaction produced by the argument and the power to convince others. All delegations should try to understand each other and help each other to overcome their fears. If those fears related to exploitation, some provision might be made for technical and other assistance; when countries expressed fear for their security, the good intentions of others might be proved by arrangements to allay those fears, through bilateral and multilateral agreements. He was sure that if enough importance were attached to consultation, a compromise solution might be reached even before the first round of voting in the Committee of the Whole.

23. Mr. SUBARDJO (Indonesia) recalled that his delegation had advocated a flexible formula entitling a State to fix the breadth of its territorial sea up to a maximum of twelve miles; that formula had been embodied in article 1 of the eighteen-Power proposal (A/CONF.19/C.1/L.2/Rev.1) of which Indonesia was one of the co-sponsors. Article 2 of that proposal provided that if a State fixed the breadth of its territorial sea at less than twelve miles it had the right to establish a fishing zone contiguous to its territorial sea, which might not extend beyond twelve miles measured from the applicable base-line. It further provided that, in that fishing zone, the coastal State had full jurisdiction over the fishing and the exploitation of the living resources of the sea in the same manner and to the same extent as in its territorial sea. That, however, as laid down in article 5 of the eighteen-Power proposal, did not preclude States from concluding bilateral or multilateral agreements granting rights to foreign nationals to fish in that zone or in their territorial sea.

24. The representative of Canada had asked why a State should have a twelve-mile territorial belt if the same rights were available under the existing articles, meaning, presumably, article 24 of the 1958 Convention on the Territorial Sea and the Contiguous Zone. That article covered the right to control customs, fiscal, immigration or sanitary matters in the contiguous zone, a zone which under the new Canadian and United States proposal would not become exclusive for ten years and which, as the representative of France had pointed out, had not yet become law. The representative of Mexico had explained the difference between the sum total of the rights of a State under a six-plus-six formula and articles of existing conventions and the full exercise of sovereign rights; but assuming, for the sake of argument, that the material content of that sum total and of full sovereign rights in a maritime belt up to twelve miles was the same, it would still be necessary, in view of existing state practice, to find a formula for the delimitation of the territorial sea which took the twelve-mile limit into account. To ignore the legislation of all States with a territorial belt wider than six miles would mean ignoring the existing legislation of some twenty-five independent sovereign States. The flexible formula contained in the eighteen-Power proposal, in combination with other articles of existing conventions, gave each State the same total amount of rights while recognizing the existing differences in municipal law on the limits of the territorial sea due to differing geographical, economic, social, historic and political conditions. Together with the principle of reciprocity contained in article 3 of the eighteen-Power proposal, the formula would cover existing differences in rights without obliging the respective States to change their municipal law, an important consideration, since a reduction in the breadth of the territorial sea would meet considerably more internal opposition than a widening of the territorial belt. The representative of the United States said he had received strong protests from fishing interests in the United States at the changed position taken by the United States delegation in order to reach a compromise. A narrowing of the territorial belt would encounter far greater difficulties, since it involved more than private commercial fishing interests, and full sovereign rights were established rights under international law, whereas the exclusive fishing rights in the adjacent zone were *in statu nascendi* and thus open to modification.

25. There was a clear tendency for the twelve-mile limit to be consolidated by the normal process of international law-making — namely, custom created by state practice. The representative of Canada, in arguing that to all intents and purposes the six-plus-six formula, with the other rights, gave the same rights as a twelve-mile limit, had strengthened the case for the twelve-mile limit, which no one in the Conference, or outside it, had proved to be contrary to international law.

26. Article 3 of the eighteen-Power draft provided that if a State had fixed the breadth of its territorial sea and the contiguous fishing zone at less than twelve miles, it had the right, if it so wished, to exercise against any other State with a greater breadth of territorial sea or fishing zone the same sovereign rights or exclusive fishing rights as if it had established the same breadth of territorial sea or fishing zone as that other State. Consequently, a State with a territorial sea of less than twelve miles would not feel discriminated against by a State with a twelve-mile territorial sea. It would, vis-à-vis that State, have all the benefits of a broader territorial sea without the permanent obligations of the greater breadth. The principle of reciprocity on which the article was based, and which was well established in general international law, was a method of evolving a formula capable of reconciling the sharply conflicting interests revealed in the Conference, without requiring the respective States to change their territorial sea limits. The principle could, moreover, be applied irrespective of the eventual adoption of a rule on the breadth of the territorial sea and exclusive or near-exclusive fishing zones, so long as differences in the breadth of those limits existed. A State faced on two different coasts by countries with a different breadth of territorial sea could invoke article 3, and thus obtain equitable compensation for a *de facto* unequal position.

27. The establishment of a contiguous fishing zone under article 2 required a legislative measure under municipal law, while for the exercise of the right of reciprocity under article 3, no such legislative measure was required in regard to either sovereignty or fishing rights. The representative of Greece was entitled to his interpretation of that article, but it was surprising to hear retortion described as being contrary to international law.

28. It would appear that paragraph 3 of the joint Canadian and United States proposal had been drawn up under great pressure of time. Fishing was not an occupation that could be changed in a short time, since it was not only an occupation but a way of life. A period of ten years was too short for the amortization of ships or for adjustment to a new kind of fishing in new areas under different conditions. While the fishermen had ten years to adapt themselves to new fishing methods, they had the same period in which to take as much fish as possible from their old fishing grounds. The aim of the provision, to ensure the gradual abandonment of the rich old fishing grounds, might be defeated by the attraction of immediate cash profit. Nor was the provision of a ten-year period an agreeable one for the coastal State, so that it solved nothing and merely postponed the problem for another ten years.

29. The eighteen-Power proposal, with its three-to-twelve-mile formula, gave a rightful place to any breadth of territorial sea which could not be considered contrary to existing international law. It had the merit of including a six-plus-six formula, whereas the joint Canadian and United States proposal excluded all those States having a breath of territorial sea of more than six miles. Articles 3 and 4 were offered as a serious contribution to the alleviation of international conflicts and friction. Viewed in that light, he could not accept the opinion voiced by the representatives of the United Kingdom and Canada, who had failed to see the constructive features of the eighteen-Power proposal, and who had in effect stated that no serious attempt at a compromise had been made apart from the joint Canadian and United States proposal.

30. Mr. KIRCHSCHLÄGER (Austria) said that, at The Hague Codification Conference in 1930, the Austrian delegate had held the view that the breadth of the territorial sea should be kept to a minimum in order to maintain the freedom of navigation on the high seas. Again, at the 1958 Conference, the attitude of the Austrian delegation had been determined solely by the consideration that any extension of the breadth of the territorial sea would inevitably reduce the area of the high seas, which as *res communis* was for ever open to all nations whether they had direct access to the sea or not. Nothing had occurred since 1958 to cause his delegation to change that attitude. The principle of innocent passage could mitigate only in part the disadvantages of an increase in the breadth of the territorial sea. It had been repeatedly emphasized at the present Conference that the principle of innocent passage did not apply to aviation. The attitude of the Austrian delegation necessarily resulted, therefore, from Austria's geographical position and should be considered as the logical continuation of the traditional Austrian viewpoint.

31. The joint Canadian and United States proposal for a six-mile territorial sea, the minimum breadth within reach in present circumstances, appeared to come closest to the settlement which the Austrian delegation considered most equitable, and it would therefore vote in favour of that proposal. The Austrian delegation had also studied the proposals providing for a breadth of territorial sea up to a limit of twelve nautical miles. While it thought that those proposals were not in line with its interests, it appreciated some of the reasons for the proposals, and was convinced that they had been conceived with the best intentions. It would therefore abstain from voting on those proposals. As to the proposals and amendments providing for special situations, the Austrian delegation would examine them with great sympathy. The uniformity desirable for the basic principles did not exclude consideration of special cases.

32. Mr. BAIG (Pakistan) said that his delegation had been relieved at the submission of the new joint proposal (A/CONF.19/C.1/L.10) by Canada and the United States of America. The issues before the Conference, though controversial, were not difficult, and the differences between the States could be resolved amicably. He welcomed the fact that certain suggestions made by the Pakistani delegation at the Committee's 12th meeting, such as the limitation on historic fishing rights and the machinery for arbitration, had been introduced in the joint proposal. The compromise would involve real sacrifices by the United States, the Canadian and many other Governments, but without such sacrifices international agreements could not be reached. If the Conference continued to work in the same spirit, undoubtedly a generally acceptable solution would soon be found. He believed that the new proposal was not an attempt to shelve the issue, since it clearly aimed at a compromise that might secure general agreement and thus avoid the failures that had attended the Conference at The Hague in 1930 and the first United Nations Conference on the Law of the Sea held at Geneva in 1958.

33. While a transitional period was normally allowed for the affected party to make the necessary adjustments when existing rights were extinguished, ten years would be barely adequate. The surveys made by the fishing States had been extremely thorough and had rendered intensive fishing possible. In view of the alarming rate of increase in the world population, it was essential to maintain the level of optimum fishing over the transitional period until alternative fishing grounds were discovered and surveyed.

34. Eighteen States had submitted a revised proposal (A/CONF.19/C.1/L.2/Rev.1) providing for a territorial sea twelve miles in breadth. It should be remembered that if any country extended its territorial limits, corresponding action would be taken by other countries, and the same limitations and controls would then be encountered in the waters of those other countries. The freedom of shipping and aviation would thus be curtailed. That raised the question whether such action would be of any specific benefit to the smaller and newer countries. There would be no economic gain. The argument that a twelve-mile territorial sea was required for security was hardly sound. In modern warfare it would make very little difference whether a hostile fleet stood within or just without a twelve-mile limit.

35. The argument had also been adduced that ships would still enjoy the right of innocent passage, but the mere fact that controls could still be exercised in the outer six miles would oblige ships to take a longer route in order to avoid the risk of unforeseen stoppages. Furthermore, there was no corresponding right of innocent passage for aircraft over the territorial sea, and an aircraft would be breaking the law if it were compelled by bad weather or some similar cause to fly over territorial waters.

36. It was to the interest of newly established sovereign States to have a well-established and codified law of the sea rather than to permit the existing state of confusion to continue. The success or failure of the Conference might well depend on the stand taken by such States. It was now evident that the original proponents of the three-mile limit had advanced substantially towards the twelve-mile concept by accepting the twelve-mile fishing zone and the extension of the territorial sea to six miles. It behoved the proponents of the twelve-mile limit for the territorial sea to make a similar gesture in order to reach a compromise. The joint Canadian and United States proposal, in its present form, amply reconciled the legitimate interests of the coastal States with the fundamental freedom of the seas.

37. Mr. TOLENTINO (Philippines), introducing his delegation's amendment (A/CONF.19/C.1/L.5), said it was based on the contention that any rule governing the breadth of the territorial sea must take special cases into account and could not prejudice established rights. The amendment did not enter into the merits of the various views on the legal concept of historic waters, but some States, such as his own, mantained that certain areas of sea were historic waters and belonged to them.

38. He recalled that, in the Treaty of Paris of 10 December 1898 between Spain and the United States, the territorial limits of the Philippine archipelago had been defined specifically and the United States had asserted sovereignty and jurisdiction within that territorial boundary. A municipal law had subsequently been enacted to regulate fishing within those territorial waters. The Philippine Republic was not asserting sovereignty over the waters lying within those treaty limits merely because it wished to claim a wider belt of marginal sea around the archipelago, for while that boundary was in some places more than twelve miles from the coast, in other places it was less than three miles from the shore of the nearest island. It neither wished to claim more than the narrowest margin nor to surrender any portion of the wider margin within those treaty limits.

39. Other States besides the Philippines claimed historic waters, and it had obviously been for that reason that the 1958 Conference had almost uninamously adopted a resolution on the régime of historic waters,[2] requesting the General Assembly to arrange for the study of the juridical régime of historic waters, including historic bays. The General Assembly had accordingly adopted resolution 1453 (XIV), requesting the International Law Commission to undertake such a study. Consequently, historic waters did not fall within the scope of the present codification and any rule adopted by the Conference on the breadth of the territorial sea would not apply to such waters. That situation would obtain even if no express provision to that effect had been included in the Conference's rule, but his delegation considered it advisable to state the exception explicitly. In studying a rule, the recognized exceptions should be set forth at the same time, and not left to inference or interpretation. Thus, article 7 of the Convention on the Territorial Sea and the Contiguous Zone expressly stated that the provisions of that article should not apply to so-called "historic" bays. The reason why that exception had been expressly stated was that the Conference resolution on historic waters was not part of the codification then drawn up. In view of that precedent, it was only logical that an exception referring to historic waters in general should be included in the rule.

40. While making that contribution to the efforts of the Conference to reach a satisfactory solution of the problem before it, the Philippine delegation had deliberately refrained from taking a definite stand on the breadth of the territorial sea, since the Philippines would not be directly affected by such a decision, owing to its special position. That fact was in consonance with the legal principle that a subsequent general law could not modify or repeal a specific rule. Furthermore, the Philippines had no fishing fleets which visited the shores of other nations. Accordingly, its attitude towards the proposal before the Committee was flexible. It was fully aware, however, of the vital importance of reaching an acceptable solution which would bring about stability, and not uniformity, in the rule on the breadth of the territorial sea. It had therefore co-sponsored the sixteen-Power proposal (A/CONF.19/C.1/L.6) as the most practical and scientific solution.

41. Since the Philippine amendment had been submitted a number of the original proposals had been amalgamated and the Mexican (A/CONF.19/C.1/L.2) and sixteen-Power proposal (A/CONF.19/C.1/L.6) had been superseded by the eighteen-Power proposal (A/CONF.19/C.1/L.2/Rev.1), which restated the substance of the Philippine amendment. Accordingly, his delegation had co-sponsored the eighteen-Power proposal and would withdraw its original amendment.

The meeting rose at 12.50 p.m.

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

TWENTY-SIXTH MEETING

Tuesday, 12 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/REV.1, L.8 TO L.12) *(continued)*

1. Mr. GUDMUNDUR I GUDMUNDSSON (Iceland) thanked delegations for the understanding they had shown, both in the Committee and in private discussions, of his country's special position. For Iceland, fishery limits were a matter of life and death. He had found it necessary to speak again in the light of certain developments since he had spoken in the general debate at the 11th meeting, and in order to answer certain points raised during the discussion.

2. He could not pretend to welcome the joint proposal submitted by Canada and the United States of America (A/CONF.19/C.1/L.10), although, of course, the reasons for his dissatisfaction with it were entirely different from those stated by the United Kingdom representative at the 23rd meeting. Iceland could have accepted a narrower territorial sea, provided that fishery jurisdiction was adequately safeguarded, but so long as that was lacking his delegation would be forced to support any proposal containing proper guarantees, and accordingly to oppose the joint proposal.

3. As to the United Kingdom representative's criticism of the Icelandic proposal (A/CONF.19/C.1/L.7) at the 23rd meeting, the Government of Iceland could not agree that there had been a fundamental change in the situation since it had first put forward its proposal in 1958. The United Kingdom representative had gone