Second United Nations Conference on the Law of the Sea

Geneva, Switzerland
17 March – 26 April 1960

Document:-
A/CONF.19/C.1/SR.26

Twenty-Sixth 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)*

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 unanamously 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

on to argue that at that time the proposal had been considered in relation to a six-mile exclusive fishery limit, but surely, apart from other proposals submitted to the first Conference, the Canadian delegation had already put forward at that Conference a six-plus-six-mile formula, and no one could have foreseen then what would be its fate.

4. In reply to the charges of vagueness, he emphasized that the Icelandic proposal was carefully limited: it would apply only to cases where the local population was overwhelmingly dependent upon coastal fisheries for its livelihood and economic development. Therefore it could not be interpreted as of excessively wide application, as the United Kingdom representative had suggested. The purpose of the proposal was to meet the interests of nations rather than those of individuals.

5. The proposal dealt only with preferential rights; Iceland was not trying to secure control over more sea than it could use, but simply to acquire a preferential position when it became necessary to limit the total catch for conservation purposes. Another special feature of the proposal was that it provided for the final assessment to be made by a body of independent experts.

6. At the 11th meeting, he had observed that so-called historic rights were, if not identical with, at least comparable to colonial rights. It was common knowledge that the three-mile limit had been maintained for so long because it had been to the advantage of powerful distant-water fishing States, enabling as it did their fishermen to sail as close as possible to the shores of other nations. Until recently such States had been able to impose their will on weaker ones. Fortunately, it was no longer possible for them to do so, and now that the injustice was at last being redressed the protestations about sacrifices of those States which had so long benefited from the situation had a hollow ring.

7. In justice, it must be admitted that the extension of fishery limits did affect populations which had been fishing in a given area and which would now be excluded from part of it. But surely the Conference was discussing, not the financial position of individuals but that of nations. In the latter connexion, attention should be drawn to the relative share of fisheries in the national economy of countries whose nationals had been wont to fish in Icelandic waters. He had not touched on the matter in his first statement, but, having heard so much about sacrifices and hardship, would refer the Conference to the second paragraph in the commentary to his delegation's revised proposal (A/CONF.19/C.1/L.7/Rev.1). He would add to what was said there that only part of the total catch of the countries in question came from Icelandic waters, and of that part again only a small fraction from the sea area lying between six and twelve miles from the coast.

8. Another fundamental fact which had been overlooked was that Iceland's present twelve-mile fishery limit in no way precluded foreign fishermen from fishing in Icelandic waters. That limit was not an impassable barrier, since fish could and did pass beyond it. In fact, most of the catch made by trawlers operating in Icelandic waters since the Second World War had come from areas more than twelve miles from the coast. If the Icelandic proposal were adopted, profitable fishing round the Icelandic coasts would still be possible for foreign vessels. His Government had repeatedly emphasized that the extension of Iceland's fishery limits to four miles in 1952 and to twelve miles in 1958 had had the beneficial effect of protecting spawning areas and nursery grounds, thereby assuring an increased catch for all. Had such measures not been taken, and had Iceland abided by the three-mile limit, fish stocks in Icelandic waters would have been ruined in a relatively short time, as indeed had occurred in some areas.

9. During the two world wars fish stocks in Icelandic waters had enjoyed valuable protection, owing to the almost complete absence of foreign trawlers from the area. Had it not been for that fact and the subsequent measures adopted by his Government, the situation would by now have been disastrous. Recent scientific investigation had shown that a further increase in cod fishing would be harmful, and would in fact be over-fishing. The cod stock was not providing what was virtually the maximum sustainable yield, and no substantial increase was to be expected. Limitations of total catch were therefore imminent. Those findings were based upon more than thirty years of scientific investigation of that particular stock, which was far and away the most important in Icelandic waters.

10. Another practical consideration, familiar to those with a knowledge of the conditions prevailing in fishing grounds, which must not be overlooked was the intolerable consequences of trawling in areas where other types of fishing gear, such as long lines and fixed nets, were also in use. Experience had clearly shown the need for protecting small boats using such gear, which were defenceless against the competition of trawlers, which ruined their equipment and prevented them from operating effectively. In that regard, the twelve-mile limit provided valuable protection to the small-boat fishing industry. The same consideration applied outside the twelve-mile limit, and, as stated in the commentary to his proposal, the possibility of taking such further measures must be to hand.

11. The United Kingdom representative had quoted figures purporting to prove that the present catch in Icelandic waters had recently fallen to such an extent that the British fishing fleet was apparently facing real disaster. However, the figures referred to one week alone — the first following the British trawler owners' decision to withdraw their trawlers from all Icelandic waters. Hence they proved nothing about the real issue, which was how much those trawlers would have caught had they respected Iceland's legislation and stayed outside the twelve-mile limit as other foreign nationals had done. Since the introduction of the twelve-mile limit, foreign trawlers had been fishing outside it, as had also most Icelandic trawlers, and good catches had been made. British trawlers might have done the same, instead of which they had departed on a so-called goodwill tour, quitting the Icelandic fishing grounds during the best fishing season in order to ensure that their catches fell by up to 89 per cent so as to provide the United Kingdom delegation with statistical arguments for use at the Conference. Moreover, while British trawlers had continued to fish inside the twelve-mile limit, under the protection of the Royal Navy, other large fishing nations, which had respected Iceland's regulations, had spent

comparatively large sums in looking for fishing grounds beyond the limit. Their search had been successful, and the new grounds had already provided a good yield.

12. He hoped his remarks would be received in the spirit in which they were made, and that Iceland's special problem would receive practical recognition: sympathy alone was not enough. His Government would welcome any suggestions for making its proposal clearer.

13. Mr. NGUYEN QUOC DINH (Viet-Nam) recalled that there were two proposals before the Committee advocating a breadth of twelve miles for the territorial sea: that of the Soviet Union (A/CONF.19/C.1/L.1) and that of the eighteen Powers (A/CONF.19/C.1/L.2/Rev.1), the latter a combination of the Mexican proposal (A/CONF.19/C.1/L.2) and that of the sixteen Powers (A/CONF.19/C.1/L.6), who had been joined by Venezuela. The system provided for in article 3 of the eighteen-Power text was a praiseworthy attempt to improve upon the basic twelve-mile formula, inspired by a desire to restore equality between States in accordance with the liberal suggestion made by the head of the Indonesian delegation at the 14th meeting. But so far as the essential element, the breadth of twelve miles, was concerned, nothing had been changed. Against those two proposals, which drew their inspiration from the same source, was set the joint Canadian and United States proposal (A/CONF.19/C.1/L.10), which advocated a breadth of six miles for the territorial sea, to which would be added a further six miles of exclusive fishing zone. It was that compromise proposal that enjoyed his delegation's support.

14. Many criticisms had been levelled against the joint Canadian and United States proposal, but in his opinion they were not justified. The proposal represented real progress inasmuch as from then on an exclusive six-mile fishing zone would be added to the first zone of six miles, corresponding to the breadth of the territorial sea. That was a happy idea, for it filled a gap whose existence had been noted by Professor Gidel, and subsequently by the International Law Commission. It was also important to note that there was nothing novel about a claim to an exclusive contiguous fishing zone. The only reason why it had taken a claim of such long standing so long to gain acceptance was that it was essentially peculiar to small, and especially to the new, States, which had only recently found themselves in a position to assert it in the concert of nations. The recognition of an exclusive fishing zone beyond the territorial sea was a triumph for the small and for the new States, and was in full harmony with the new requirements of the international community. He reminded the Committee that his delegation had already had occasion to make an impassioned plea for the recognition of preferential fishing rights, both at the first Conference and in its statement at the 3rd meeting of the present Committee. It was very satisfied with the response which the idea of such preferential rights had evoked.

15. It was the joint Canadian and United States proposal that seemed best to respect freedom of navigation, which was the fundamental aspect of the age-old principle of the freedom of the seas. Recognition of a contiguous zone, while ensuring respect for the rights of the coastal State, would place the minimum of constraint on navigation on the high seas.

16. The joint proposal also had the indispensable advantage of contributing to the codification of the rules of law. True, a six-mile limit would be only the maximum; but if it were recognized that the three-mile rule no longer held good, the play of variation would be extremely small. In practice, adoption of the proposal would put an end to the prevailing chaos, and the resultant reversion to order and law would be to the benefit of all States, large and small — perhaps even more so to the small ones.

17. The lack of unification in the field under discussion was a source of discrimination and, what was really serious, discrimination that worked to the advantage of the strongest States, which would be placed in a privileged position by the adoption of a twelve-mile limit. It was true that the eighteen-Power proposal sought to remedy that situation, but only at the price of introducing new complications which might add to the initial chaos inherent in the twelve-mile formula. The joint Canadian and United States proposal would happily close the gap left in the provisions of the 1958 Convention on the Territorial Sea and the Contiguous Zone. Thenceforth, the coastal State would enjoy, in the contiguous zone, a cluster of powers of considerable scope. Delegations which favoured the twelve-mile limit could of course ask whether the sum of those powers would be equal to those which the coastal State would enjoy if the outer six-mile zone were simply part of the territorial sea; and some had already replied to that question in the negative. In his opinion, however, the problem deserved profound thought. Those who demanded an extension of the territorial sea to twelve miles were moved by two cares: the creation of exclusive fishing rights and the establishment of a security zone.

18. As to the first preoccupation, the question arose whether exclusiveness would be affected by the provisions of paragraph 3 of the joint proposal. It should be noted that the text of that article allowed foreign fishing for a transitional period of ten years. That provision had aroused criticism, but in his delegation's opinion it represented the essential solution to a difficult problem. It took account not only of the interests of the coastal State but also of those of other States, whose legitimacy had been recognized by the Conference. In that respect, the eighteen-Power and the joint proposals differed only in the means of implementation, since article 5 of the eighteen-Power proposal could be interpreted as meaning that the interests of the non-coastal States must, where necessary, be protected by means of special, bilateral or multilateral agreements. In any event, the solution advocated in the joint proposal submitted by Canada and the United States seemed more logical than that provided in article 5 of the eighteen-Power text. Moreover, the institution of a transitional period was not really likely to affect the rights of coastal States. In truth, the joint proposal was less a compromise than an arbitral award.

19. As to the security zone, he would refer to the statement made at the 10th meeting by the representative of India, who had reminded the Conference that the small States still feared domination by the large ones, and therefore wished to have as wide a territorial sea as possible to make their defence secure. Other speakers had endeavoured to show that the defence of the security

zone was dependent upon a breadth of twelve miles for the territorial sea. In that connexion, the representative of Viet-Nam would like to recall that in the commentary on article 66, paragraph 4, of its draft articles on the law of the sea, the International Law Commission stated that the Commission had not recognized special security rights in the contiguous zone.[1] In so far as legitimate measures of self-defence against an imminent and direct threat to the security of the State were concerned, the Commission rightly referred to the general principles of international law and to the Charter of the United Nations. The protection of a coastal State, assured by its own resources in virtue of the provisions relating to the right of innocent passage, was often likely to be illusory, especially if the State was small. Very often the security of the State would be better safeguarded if the outer six-mile zone were placed directly in the keeping of the international community.

20. Where the exercise of other prerogatives in the matter of innocent passage was concerned, coastal States had invariably shown moderation and a liberal spirit, and disputes were relatively rare. That meant that so far as the coastal State was concerned those prerogatives were of secondary importance. Such an interpretation was in perfect harmony with the fundamental meaning of the concept of innocent passage, for the purpose of that concept was to ensure that the collective nature of the international public domain prevailed over the private nature of the territorial sea; it followed that the concept was made not for the coastal State but for the users of the high seas.

21. The sole question at issue was whether, in order to uphold certain national prerogatives, it was necessary to extend the breadth of the territorial sea to twelve miles, thus detracting from the principle of freedom of navigation. He hoped that a general agreement would be concluded, so that the progressive solutions which had been proposed could be put into effect, and that even the most intransigent Governments would accept the sacrifice of a few modest prerogatives.

22. Mr. GARCIA AMADOR (Cuba), introducing the Cuban draft resolution (A/CONF.19/C.1/L.9), said that his delegation was still convinced that the only possible way of reconciling all the various points of view put forward at the Conference lay in the recognition of preferential rights in favour of the coastal State, at least for so long as there was no genuine and spontaneous general agreement on the breadth of the territorial sea.

23. He urged the Conference to adopt the Cuban draft resolution as the most practical, the fairest and technically the best-founded method of solving the difficulties before the Conference. He could do so without immodesty, because the proposal had its origins in earlier proposals, introduced by other delegations in the Third Committee of the first Conference in 1958, the committee which had been entrusted with the questions of fisheries and the conservation of the living resources of the sea. He wished to refer specifically to the proposals submitted jointly on that occasion by Chile, Costa Rica, Ecuador and Peru,[2] by the Philippines and the Republic of Viet-Nam,[3] by Burma, Chile, Costa Rica, Ecuador, Indonesia, the Republic of Korea, Mexico, Nicaragua, the Philippines, the Republic of Viet-Nam and Yugoslavia,[4] by Iceland [5] (a proposal which was similar, up to a point, to the Icelandic proposal at the present Conference), and lastly to the draft resolution submitted by Ecuador,[6] which had been the basis of the resolution adopted by the first Conference on special situations relating to coastal fisheries.[7]

24. The Cuban draft resolution recommended the conclusion of an additional protocol to the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas that would serve to establish the preferential rights of the coastal State in fisheries in the high seas. It was true that the main purpose of the Convention in question was to regulate conservation, but its title made it abundantly clear that it related also to the exercise of the right of fishing in the high seas. The proposed additional protocol would therefore not be out of place in it.

25. The point from which the Cuban draft resolution departed was the recognition by the first Conference, in resolution VI, of the preferential character of the requirements of those " countries or territories whose people are overwhelmingly dependent upon coastal fisheries for their livelihood or economic development " and of those " whose coastal population depends primarily on coastal fisheries for the animal protein of its diet and whose fishing methods are mainly limited to local fishing from small boats ". But in addition to those exceptional cases — for which incidentally resolution VI of the 1958 Conference did not provide any effective remedy — the requirements and interests of other coastal States in the conservation and exploitation of the resources of the sea could also be preferential in nature — for instance, when their nationals regularly fished in areas of the high seas adjacent to the territorial sea, so that the fishery resources of those areas were important to them for economic development purposes or food supply. The Cuban draft sought to confer recognition on the preferential character of the requirements of all the States concerned, and he submitted that it did so in the only feasible way.

26. The effect of the Cuban draft resolution, if adopted, would be that, when the unilateral measures of conservation adopted by the coastal State consisted in limiting the total catch of a stock or stocks of fish, subparagraph 2 (*c*) of article 7 of the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas would be made inapplicable in so far as that was necessary in order to take due account of the special requirements and interests of the coastal State.

27. His delegation's draft resolution referred to the high seas which extended seaward from the outer limit of the territorial sea. Unlike the Icelandic and other proposals, it did not seek to establish a contiguous fishing zone. In addition to the technical and legal difficulties inherent in such a course, no plausible economic reason

[1] *Official Records of the General Assembly, Eleventh Session, Supplement No. 9*, p. 39.

[2] *Official Records of the United Nations Conference on the Law of the Sea*, vol. V, annexes, document A/CONF.13/C.3/L.41.

[3] *Ibid.*, document A/CONF.13/C.3/L.60.

[4] *Ibid.*, document A/CONF.13/C.3/L.66 and Rev.1.

[5] *Ibid.*, document A/CONF.13/C.3/L.79/Rev.1.

[6] *Ibid.*, document A/CONF.13/C.3/L.89.

[7] *Ibid.*, vol. II, annexes, document A/CONF.13/L.56, resolution VI.

had so far been adduced to justify the complete exclusion of foreign fishermen from part of the high seas. Such exclusion would be tantamount to preventing in an arbitrary manner the exercise of a legitimate right, the right to fish, guaranteed by article 2 of the 1958 Convention on the High Seas. In addition, it would be detrimental to the food supply of mankind as a whole.

28. The Cuban dreft resolution sought to empower the coastal State to restrict the fishing of foreign fishermen, but only where such limitation was genuinely necessary. Unlike the proposals for an exclusive fishing zone, it held no suggestion of automatic or general exclusion of foreign fishermen. The coastal State would merely have the potential right to order such exclusion, subject to the safeguards contained in the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas. Moreover, an exclusive fishing zone would necessarily be limited in breadth, and would to that extent fail to meet the real requirements of the coastal State.

29. The proposed additional protocol would apply only to cases where a coastal State adopted unilateral measures of conservation consisting in limitation of the total catch of a stock or stocks of fish. Only with respect to the limitation of total catch were there grounds for recognizing the special requirements and interests of the coastal State and hence the possibility of some measure of exclusion of foreign fishermen. There could be no question of discrimination against foreign fishermen in the application of other conservation measures, such as those relating to fishing methods.

30. The Cuban draft resolution also provided a remedy for possible abuses by the coastal State. The proposed additional protocol would suspend only sub-paragraph 2 (*c*) of article 7 of the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas, leaving all the other provisions intact. He drew special attention to articles 9 to 12 of the Convention, which provided for the settlement of disputes and safeguarded the rights and interests of the nationals of States other than the coastal State. The legitimate interests of foreign fishermen were thus adequately protected whenever they did not threaten the optimum sustainable yield. Needless to say, technical difficulties might arise in determining the extent to which limitations upon fishing by foreign fishermen were necessary. But such problems were not insoluble, and the Conference could consider what steps could be taken to find a solution to them.

31. The need to protect the interests of under-developed countries had been strongly argued, and it had been suggested that that purpose might be achieved by extending the breadth of the territorial sea or by establishing an exclusive fishing zone. With regard to the first possibility, it had been amply demonstrated that, first, there were no valid grounds for suggesting that the security of the coastal State required a territorial sea exactly twelve miles broad, and, second, that there were much better safeguards under the present international organization for the safety of small States than the mere extension of the territorial sea. As to the second course, it was clear that the exclusive fishing zone did not meet the real needs of all the coastal States. On the other hand, the Cuban formula, which involved the recognition of preferential rights, offered the maximum advantages with the minimum of inconvenience.

32. Although the Cuban draft resolution was not necessarily dependent on the results of the voting on the other proposals before the Committee, there could be no doubt that they would have a great bearing on its timeliness. The reason therefor was simple: the Cuban draft resolution evaded the issue of the breadth of the territorial sea. Without, therefore, formally withdrawing it, he requested that it should not be put to the vote in Committee, and reserved his delegation's right to reintroduce it at a plenary meeting of the Conference.

33. Mr. RIPHAGEN (Netherlands) said that his delegation would vote for the joint Canadian and United States proposal (A/CONF.19/C.1/L.10); for the reasons he had already given, it could not support any proposal permitting the breadth of the territorial sea to be fixed at twelve miles.

34. But that was not to say that the Canadian and United States proposal was in accordance either with his country's national interests or with those of the international community as a whole. As he had asserted in his general statement at the 6th meeting, geographical proximity to fishing grounds on the high seas did not in itself constitute an adequate legal basis for exclusive fishing rights, and any solution to the fisheries problem ought to take into account the special circumstances of every individual case, viewed in the light of the needs of the coastal and fishing States involved. The joint proposal did not make provision for special situations, but established a general rule which favoured the interests of the coastal State. His delegation would nevertheless support it, because it was likely to command the required two-thirds majority, and because its adoption seemed to be the only way of averting the failure of yet another attempt to establish a rule of international law governing the breadth of the territorial sea.

35. His delegation did not believe that, if adopted by the Conference, the joint proposal would automatically settle all fishery problems, or indeed, that it was intended to do so. Many delegations which had supported it had given encouraging signs of willingness to conclude, by bilateral or multilateral negotiation, fishery agreements that would take special circumstances into account and would therefore be more equitable than any general rule could ever be. He accordingly hoped that, once the Conference had laid down such a rule, the coastal and fishing States concerned would adapt their fishing arrangements to the needs of each particular situation.

36. Mr. PECHOTA (Czechoslovakia), explaining his delegation's attitude to the proposals under consideration, said that at the 7th meeting he had made known the reasons for which it supported a delimitation of the territorial sea between three and twelve nautical miles, combined with the option of establishing an exclusive fisheries zone up to the same outer limit. Accordingly, it considered that the Soviet Union proposal (A/CONF. 19/C.1/L.1) and the very similar original Mexican proposal (A/CONF.19/C.1/L.2) offered the most appropriate solutions, and fully supported the later eighteen-Power proposal (A/CONF.19/C.1/L.2/Rev.1), which provided for the equitable and satisfactory regulation of the issues at stake. The aforementioned proposals were based on full recognition of the inalienable rights and interests of coastal States, reconciled the principle of their sovereignty

with that of the freedom of the high seas, and were in harmony with the well-established practice of States in regard to the delimitation of their territorial sea, which had created the principles at present applied.

37. There could be no doubt that the twelve-mile limit alone could provide a foundation for a universal rule of law. Any other formula, even though it might gain temporary support at the Conference, would inevitably remain a dead letter, since it would be unable to withstand the application of the twelve-mile rule which had gained a firm footing both in practice and legislation and answered the real needs of States.

38. Efforts to circumscribe the application of the twelve-mile rule, which were apparently prompted by strategic, political and economic considerations, could not be expected to prosper in modern times, and it was essential to realize that in an age of intense and world-wide political, economic and social development that was particularly marked in areas that had hitherto been politically and economically isolated or subject to colonial rule, the needs and interests of no member of the international community could be overlooked. Failure to take the rights and interests of a considerable number of States into account when establishing rules governing the breadth of the territorial sea and fishing zone would have most deplorable effects on the development of international co-operation and the rule of law in regulating relations between States.

39. The authors of the joint proposal (A/CONF.19/C.1/L.10) had claimed that it was a compromise between the original United States and Canadian proposals, and they, together with some of their supporters, had reiterated that it would entail heavy sacrifices, which had been accepted for the sake of agreement. In the present context, the only action that could be described as a sacrifice was the surrender by a government of part of its inalienable rights for the common good. If a right was to be regarded as definite jurisdiction in the prositive sense — as, for example, sovereignty over the territorial sea — proposals envisaging a twelve-mile limit required no sacrifice from any State, since none was obliged to modify its laws on the territorial sea, or to give up any part of its territory and with it certain inalienable rights pertaining to defence and to the exploitation of the living resources of the sea. On the other hand, the joint proposal would demand disproportionate sacrifices from a large group of States, since it provided for a maximum territorial sea of six miles and safeguarded the so-called "historic" fishing rights of third States in the contiguous fishing zone without offering any *quid pro quo*.

40. Enough had been said during the general discussion about the importance to coastal States of a twelve-mile territorial sea on security grounds. Many representatives, particularly those of countries under no threat, had contested that argument, but unavailingly. The sole and best qualified judge of problems connected with defence and sovereign rights was the State concerned. The significance of defence considerations in determining the breadth of the territorial sea had been admirably expounded by, among others, the representatives of the United Arab Republic (17th meeting), India (10th meeting), Ethiopia (18th meeting), and especially Iran (17th meeting).

41. Advocates of the narrowest possible territorial sea commonly adduced the specious argument that the freedom of navigation, which was of vital concern to the international community, could best be safeguarded by extending the area of the high seas. That argument had already been convincingly refuted, but he would emphasize that neither the Soviet Union nor the eighteen-Power proposal provided for automatic extension of the territorial waters of all States to twelve miles, and that, in any event, the difference between a six-mile and a twelve-mile territorial sea, in terms of a reduction in the extent of the high seas, would have no appreciable effect on the régime of the latter. On the other hand, such a zone was vitally necessary to many coastal States for security and economic reasons. Moreover, an extension of the territorial sea to twelve miles would not harm merchant shipping, since vessels of all States enjoyed the right of innocent passage through such waters. Merchant ships had in fact been molested on the high seas, although international law guaranteed absolute freedom there.

42. The fact that the joint Canadian and United States proposal recognized the concept of the so-called "historic" or "acquired" rights of fishing States in the contiguous fishing zone of coastal States clearly showed that its sponsors had finally abandoned the idea of an exclusive fishing zone, which the Canadian representative had claimed to lie at the root of his delegation's original proposal. The continued exercise of such acquired rights for a period of ten years would, in practice, amount to their virtual perpetuation when viewed in the light of the present tempo of political and economic development. Many countries which had hitherto been obliged to allow their marine resources to be exploited by foreign fishing fleets justifiably regarded the imposition of the so-called historic rights of foreign States as highly injurious to their developing national economy. Many so-called under-developed countries were making rapid economic progress, and would be capable of organizing national trawler fleets and fish-processing plants in a relatively short time. He believed that the Canadian delegation had at one time shared that view, for, when submitting its original proposal (A/CONF.19/C.1/L.4) at the 5th meeting, the Canadian representative had criticized the concept of so-called historic rights. It was a pity that Canada had later abandoned that position. The concept of acquired rights, as embodied in the joint proposal, was a mere legal fiction reminiscent of the generally discredited theory, put into practice by certain Powers, that the natural wealth of non-European regions should be predominantly exploited by economically advanced countries, even though that might be detrimental to the interests of its rightful owners.

43. His delegation did not share those views, but believed, like most other delegations, that every State was entitled to exercise exclusive sovereignty over its own natural resources, including the living resources of its coastal waters. That view was based on the generally accepted principle of the right of nations to self-determination, and had been reflected in decisions of the United Nations General Assembly — for instance, in resolution 626 (VII), adopted on 21 December 1952.

44. His delegation would vote for the Soviet Union and eighteen-Power proposals, because they recognized the legitimate interests of all States, took full account of the political and economic conditions prevailing in the

world and were based on the principle of strict non-discrimination. It could not support the joint Canadian and United States proposal which did not provide a satisfactory solution to the problems before the Conference. It reserved the right to deal at a later stage with the other proposals before the Committee.

45. Mr. CHACON PAZOS (Guatemala) said that his delegation fully appreciated the magnitude of the political and economic sacrifices which many countries were prepared to make; that commendable spirit of conciliation was a good omen for the success of the Conference. Guatemala, too, was prepared to make sacrifices as its contribution to the joint efforts to establish a definite rule of international law on the important questions before the Conference. Accordingly, although Guatemala had, more than twenty-five years ago, fixed the breadth of its territorial sea at twelve nautical miles, and had maintained that delimitation uninterruptedly ever since, it was prepared to support paragraphs 1, 2 and 4 of the joint Canadian and United States proposal (A/CONF.19/C.1/L.10). Accordingly, if the formula embodied in that proposal came to be accepted as a rule of international law, Guatemala would renounce the outer six miles of its territorial sea, retaining therein only its exclusive fishing rights, in addition to a measure of jurisdiction in fiscal, immigration, public health and cognate matters.

46. His delegation was unfortunately unable to support paragraph 3 of the joint proposal, although some of its provisions also entailed sacrifices for certain States, and although his delegation recognized the basic justice of the ten-year period of grace granted to foreign fishermen to enable them to adapt themselves to their subsequent exclusion from the contiguous fisheries zone. Paragraph 3 only covered the case of States which had hitherto maintained a territorial sea not more than six miles in breadth and which, by virtue of a new rule of international law, would thenceforward enjoy exclusive fishing rights in the outer six-mile zone. That provision took no account of the case of countries like Guatemala which, over the past five years and more, had exercised factual jurisdiction over a territorial sea more than six but less than twelve miles broad. That delimitation, within the permissible maximum breadth of twelve miles, had not been contrary to international law, as the International Law Commission itself had recognized, yet those countries would be asked to renounce the outer six miles of their territorial sea. It would be unfair to require of them that they at the same time accept as legitimate, even for a limited term, foreign activities which had clearly been illegal previously, and in many cases, such as that of Guatemala, a source of grave international difficulty. For those reasons, paragraph 3 as it stood was unacceptable to the Guatemalan delegation.

47. In an endeavour to reconcile those divergent viewpoints to the greatest possible extent, his delegation had submitted an amendment (A/CONF.19/C.1/L.12) to paragraph 3 of the joint Canadian and United States proposal. The amendment would insert after the words "Any State whose vessels have made a practice of fishing" the phrase "in a lawful manner and without opposition from the coastal State". The right to continue to fish in the contiguous zone for a period of ten years would therefore not obtain if past fishing had constituted an offence at law or if it had given rise to protests by a coastal State which, by virtue of its municipal legislation, had declared the sea area in question a part of its territorial sea without thereby violating the international law on the subject.

48. The Guatemalan amendment would not prejudice the legitimate rights of foreign fishing industries or those of the thousands of persons employed by them, but would protect those States which, chiefly because of their lack of effective means of supervision and enforcement, had in the past been the victims of depredations committed by certain irresponsible commercial concerns. He was sure that adoption of the Guatemalan amendment would help to rally a number of other delegations to the side of the joint proposal.

49. Having, subject to the point covered by his amendment, made up its mind to support the joint proposal, his delegation would abstain from voting on all other proposals in the hope of thereby facilitating the work of the Conference. Its abstention was not to be interpreted as expressing disapproval of the terms of those proposals, many of which his delegation would have liked to see carried; but it was clear that the joint Canadian and United States proposal was the only balanced compromise before the Committee, and the only one which, with the minor amendment proposed by his delegation, was likely to obtain the necessary two-thirds majority.

50. His delegation hoped that the Conference would approve a rule of international law governing the breadth of the territorial sea and fishery limits, but did not wish the adoption of such a rule to be a source of friction between States because of the bestowal of the accolade of legal recognition on unlawful acts. As short a period as ten years could suffice to bring about a deterioration in the good relations existing between certain States if that were done, and the final outcome would be a step backwards in peaceful co-existence among nations instead of a real step forward in the rule of law.

The meeting rose at 5.40 p.m.

TWENTY-SEVENTH MEETING

Wednesday, 13 April 1960, at 10.15 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.7/REV.1 AND L.8 TO L.12) *(continued)*

1. Mr. BARNES (Liberia) said that his delegation would vote in favour of the joint proposal tabled by Canada and the United States (A/CONF.19/C.1/L.10), which represented a diligent and honest effort by its sponsors to secure the success of the Conference, since it was