Second United Nations Conference on the Law of the Sea

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Twenty-Seventh Meeting of the Committee of the Whole

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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

conceived in a spirit of compromise. It was difficult to discern a similar spirit in the steadfast and unchanged positions of the protagonists of the twelve-mile rule.

2. The joint proposal by Canada and the United States, limiting the territorial sea to a maximum of six miles, offered adequate security to a coastal State, yet preserved the sea as the common highway of all mankind, thus maintaining maximum freedom of the seas for navigation. The security of coastal States appeared to be the dominant motive for an extension of the territorial sea. In a six-mile territorial sea, the effective control necessary for the maintenance of security would not be the burden which a twelve-mile territorial sea would impose. The absolute right of transit of merchant ships through many international shipping routes was preserved by the extension of the territorial sea to six miles, whereas in a twelve-mile territorial sea that absolute right became the qualified right of innocent passage. Several representatives had said that, in the avoidance of the exercise of that right, merchant ships navigating beyond the widened territorial sea would necessarily make longer and less economical runs, thereby increasing shipping rates. Liberia, with its important interest in international shipping, could not support any proposal that would restrict freedom of navigation by converting the absolute right of free transit for merchant ships into a qualified right, nor could it abstain on that question.

3. The Liberian delegation welcomed the provision, in paragraph 3 of the joint Canadian and United States proposal, for a ten-year period to give the distant-water fishing States reasonable time for readjustment. A period of ten years might not satisfy all coastal and distant-water fishing States, but that was inevitable, since a compromise could satisfy neither party and pre-supposed sacrifice.

4. He urged all delegations not to look upon the Conference as a theatre where two divergent views had met to measure their strength, but as an opportunity to contribute to the lessening of international tension and the preservation of world order and peace.

5. Mr. SHUKAIRY (Saudi Arabia) said he would confine his remarks to the Canadian and United States proposal (A/CONF.19/C.1/L.10). While it was gratifying to observe that those two delegations had succeeded in bridging their differences, it should be noted that the process had not involved any change in their original position, the advocacy of a six-mile breadth for the territorial sea. In his introduction of the joint proposal, the United States representative had refrained from mentioning any of the arguments that had been advanced in support of its thesis during the general discussion; he had done wisely because those arguments had all been refuted and the weight of legal, economic and political considerations had been proved to be overwhelmingly on the side of a twelve-mile, rather than a six-mile limit. Instead, the United States representative had contended that a six-mile territorial sea was not in all cases merely double the size of a three-mile sea; that novel argument had not entered the minds of the delegations of smaller nations, probably because they had not developed any feeling of domination over the high seas, but considered that, in the case of property held in common, gains and losses would be felt by all. It would seem from the United States representative's argument that the whole question boiled down to the relative areas of the high seas and territorial waters; but the area of water represented 73 per cent of the earth's surface, while the land area was only 27 per cent. Man had struggled from time immemorial to bring coastal waters under his domain and to harness the high seas for navigation, and his encroachment on the sea was a process which could neither be stopped nor retarded. The reduction of the high seas, upon which the United States representative based his case, corresponded to the necessities of life and had continued since before the establishment of any limits whatsoever.

6. With regard to the Canadian representative's explanation concerning the proposed fishing zone, although the proponents of a twelve-mile breadth for the territorial sea admitted the right of States to exclusive fishing within that limit, they could not recognize the existence of a fishing zone as such. There was no international jurisprudence which defined any specific coastal fishing zone: fishing had always been one of a set of rights enjoyed in the territorial sea, whatever its limits. Exclusive coastal fishing beyond the limits of the territorial sea was therefore inconceivable, because exclusive rights must have some basis. While it might be argued that the Conference could establish a new rule, it was the quality of its international legislation that counted, and not its capacity to make such legislation.

7. In his opinion, having accepted a breadth of twelve miles for a fishing zone, the Canadian and United States delegations were bound by logic, reason and common sense to accept a twelve-mile limit for the territorial sea. There was no precedent in any Anglo-American sources of international law for a fishery limit of twelve miles; that figure would be arbitrary if it were not connected with the twelve-mile limit proposed for the breadth of the territorial sea, and the Canadian and United States delegations had therefore tacitly accepted that limit as desirable. Contrary to the Canadian representative's arguments, the extension of the territorial sea to twelve miles was not motivated solely by a desire to control fisheries, since fishing disputes between States had invariably arisen in respect of fishing beyond the territorial sea. The inevitable conclusion was that a twelve-mile fishing zone was inseparable from a twelve-mile territorial sea, and that recognition of the former led *ipso facto* to recognition of the latter.

8. The Canadian representative had observed that, while agreement on the desirability of a twelve-mile fishing zone was almost unanimous, there was still a wide difference of opinion concerning the breadth of the territorial sea. That position of simultaneous unity and disunity was, however, anomalous in view of the inseparability of the two questions. Unity on the question of the fishing zone was in fact lost in the disunity on the breadth of the territorial sea. The Canadian and United States proposal was an integrated whole and his delegation, for one, found it entirely unacceptable.

9. The purpose of the Conference was to establish a rule of law. The joint Canadian and United States proposal might be adopted by a majority and become a convention open for signature, but it could not become law unless it were generally accepted. If the signatories chose to establish a six-mile rule, they would be free to do so, but other States would abide by the twelve-mile limit

that they had established. It was being said that the twelve-mile rule was doomed to failure and that the six-mile proposal was the only alternative. While various types of pressure could be exercised to obtain the necessary votes, the deep breach between the two positions could not be healed by a mechanical decision. The position of the advocates of a six-mile limit was not one of compromise or conciliation. Thus, the United Kingdom representative who had eloquently urged compromise showed a complete lack of that spirit in dealing with the problems of Iceland; at the same time, he had asked the delegations which favoured the twelve-mile limit what compromise they had to offer.

10. In evaluating a compromise, the starting point had to be taken into account. The advocates of the six-mile limit claimed that they had begun with a three-mile breadth of territorial sea. Nevertheless, it had been proved during the debate that the three-mile limit had never been definitely established in the United States, in France or in the United Kingdom, and that those States had differed widely in their interpretations of the freedom of the seas. On the other hand, the eighteen-Power proposal (A/CONF.19/C.1/L.2/Rev.1) offered equal opportunities for all and protected the interests of all; its sponsors claimed no privileges that were denied to any other States. The Canadian and United States proposal was prejudicial to the interests of other States and was, moreover, not practicable: it would be impossible, for example, to force the Soviet Union to accept the six-mile limit as a rule of law. Furthermore, many small nations had established a twelve-mile limit many years previously. An international rule of law could not suit the interests of some nations only. The economic, political, legal and security considerations involved all militated in favour of the twelve-mile rule.

11. Mr. TUNKIN (Union of Soviet Socialist Republics) said that the general debate had been useful in clarifying the positions of various States. There were now three basic proposals before the Committee, reflecting two positions. The USSR proposal (A/CONF.19/C.1/L.1) and the eighteen-Power proposal (A/CONF.19/C.1/L.2/Rev.1) provided for a rule of international law under which every State could expand its sovereignty to a limit of twelve nautical miles, depending upon its needs and circumstances, while the Canadian and United States proposal (A/CONF.19/C.1/L.10) provided for a territorial sea of six miles, plus a fishing zone of six miles.

12. The supporters of the latter proposal used economic and legal arguments against the twelve-mile limit. From the economic point of view, they asserted that a twelve-mile limit would create great difficulties for navigation and air communications; but those arguments were refuted by the provisions concerning innocent passage and passage through straits of the 1958 Convention on the Territorial Sea and the Contiguous Zone, and there had been no instances of the hampering of air communications as a result of the establishment by many countries of a twelve-mile limit. From the legal point of view, many speakers had claimed that the establishment of the twelve-mile limit was prejudicial to the principle of the freedom of the high seas. That argument was invalid, however, since there had been no attempt during the second Conference to amend the principle enshrined in the 1958 Convention on the High Seas. The assertion that there was a connexion between the question of the breadth of the territorial sea and the principle of the freedom of the high seas was correct, but the implication that an extension of territorial waters would encroach upon the high seas was a vast exaggeration.

13. The weakness of the arguments in favour of the Canadian and United States proposal arose from the fact that they did not reflect the real motives of the supporters of a six-mile limit. A rule of law was not a technical rule of behaviour: it had, rather, a social content and reflected specific social interests and aspirations. The underlying purpose of the six-mile rule was to enable certain maritime Powers to approach the shores of other States and thus to influence their policy and domestic affairs, contrary to the provisions of the United Nations Charter. Thus, the six-mile rule constituted a refusal to recognize the legitimate rights of States to security and to protection of their national fisheries. Adoption of the twelve-mile rule, on the other hand, would take into account the political, economic, security and legal interests of all countries. Where defence was concerned, some speakers had asserted that the breadth of the territorial sea would have no significance in times of war, owing to modern technical developments. Even that assertion applied only to large-scale wars and not to local conflicts; in any case, the Conference should not be concerned with the possibility of war. There had been many examples of warships cruising near the shores of foreign countries in peacetime and exerting pressure on them. The United States representative had said that twelve miles was further than the eye could see; that was an important point, since pressure could be exercised through the psychological effect of seeing large, menacing warships off the shore. It was noteworthy that the supporters of the twelve-mile limit were either the weaker States or those which did not send their warships to foreign shores.

14. With regard to economic rights, it was particularly important for underdeveloped countries to be entitled to prohibit foreign ships from fishing within twelve miles of its shores, if it so desired. The Canadian and United States proposal ostensibly recognized that right, but then withdrew it by establishing the six-mile fishing zone in which the coastal State would not possess full sovereign rights; that was why the text had been called the " six, plus six, minus six proposal ". When the French representative had asked why such rights should be given to States which did not fish off their own shores, the Sudanese representative had replied that the economic weakness of certain countries was an additional argument in favour of the twelve-mile rule, and the Iranian representative had rightly pointed out that States which were unable to exploit their fisheries to the full might do so in future. If under-developed countries were not given the right to develop their fisheries, it was hard to see how they could compete with the well-equipped fishing fleets of the great maritime Powers.

15. The advocates of the twelve-mile rule had been accused by several speakers of unwillingness to compromise, and the Canadian and United States joint proposal had been praised as an example of conciliation. That argument, however, merely showed a mechanical

approach to the whole question. The only compromise in the joint proposal was one between the Canadian and United States positions: from the international point of view there was no compromise. It was proposed to reach a compromise at the expense of States which had already established a twelve-mile limit, but they could not be asked to renounce a breadth of sea over which they already had territorial jurisdiction. Furthermore, such a compromise could be reached only at the expense of the legitimate rights of States which were trying to protect their shores and develop their fisheries. Any State which wished to help under-developed countries could do so by recognizing their right to expand their fisheries within a twelve-mile limit. That was the only basis on which agreement could be reached.

16. The problems before the Conference could be settled only by taking into account real situations and trends of development. The fact that fourteen States had extended their territorial seas to twelve miles since 1945 was not fortuitous, but was due to changes in the international situation and in technical progress. The Conference should not cling to obsolete concepts, but should look forward, as it had done in 1958 in the case of the Convention on the Continental Shelf. The first Conference had taken a bold step forward in providing that the coastal State exercised over the continental shelf, defined as the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea to a depth of 200 metres or more, sovereign rights for the purpose of exploring it and exploiting its natural resources. Obviously, not all States needed that provision, and yet it was provided in article 2 that the rights referred to were exclusive in the sense that, if the coastal State did not explore the continental shelf or exploit its natural resources, no one might undertake those activities or make a claim to the continental shelf without the express consent of the coastal State. In view of that far-reaching provision, there seemed to be no reason to reject a progressive proposal to protect the legitimate rights of States within a twelve-mile limit. The establishment of such a rule, which took existing circumstances and future trends into account, would be an important step in the development of international law.

17. The Soviet Union delegation had modified the proposal it had made at the 1958 Conference to take into account the comments made by various delegations at that time. In the same spirit of co-operation, it would now withdraw its own proposal (A/CONF.19/C.1/L.1) in favour of the eighteen-Power proposal, which incorporated the basic provisions of its own text.

Mr. Sörensen (Denmark), Vice-President, took the Chair.

18. Mr. GARCIA HERRERA (Colombia) said his Government's position with regard to the breadth of the territorial sea and fishery limits could be summed up rapidly. Since 1923 the breadth of the territorial sea had been fixed by law at twelve miles; at the first United Nations Conference on the Law of the Sea, Colombia had supported proposals to fix that breadth as a general rule of international law. It had not recognized and did not recognize the legal validity of so-called historic rights, for well-grounded reasons which had not so far been refuted. It supported the general principle of the freedom of the high seas, and accepted only such restrictions on it as were established in international law. It had not accepted or demanded exclusive fishing zones beyond the territorial waters of coastal States; it did, however, recognize in its favour the existence of certain preferential rights. The codification of international law should be the result of the agreement of a majority of States, and procedures for peaceful settlement should be compulsory in all cases of dispute or conflict.

19. As Colombia was in favour of conciliation in all circumstances of international life, and considered compromise as the most effective method of reaching equitable and satisfactory solutions, there should be no surprise that the Colombian delegation, despite its domestic legislation and the attitude it had taken at previous conferences in favour of extending the breadth of the territorial sea to twelve miles, had decided, even before the Second United Nations Conference on the Law of the Sea had opened, that it would be prepared to support the original Canadian proposal (A/CONF.19/C.1/L.4) as closest to the present requirements of international order and the nearest to a compromise solution. The proposal now submitted jointly by Canada and the United States (A/CONF.19/C.1/L.10) was a further step towards the required compromise on the territorial and fishery limits. Strong assertions had been made that the proposal was far from being a compromise formula, but the Colombian delegation could not agree. The two countries which had merged their original proposals, like others which had lent their support to the resulting compromise formula, had always held firmly to the tradition of the three-mile limit. To double the breadth of the territorial sea and then add six more miles as an exclusive fishery zone, bringing the total up to twelve miles, was clear evidence of a spirit of compromise.

20. In the original Canadian proposal there had been no reference to so-called historic rights, whereas the original United States proposal (A/CONF.19/C.1/L.3) had offered to recognize for all time the rights of States to continue to fish in the exclusive fishery zone of other States, if they had made a practice of doing so during the period of five years immediately preceding 1 January 1958. The compromise formula merely established a transitional period of ten years from 31 October 1960, after which the fishing rights claimed by non-coastal States would cease. It could not be said that a stipulation of that sort did not entail reciprocal concessions. If to renounce the exercise for all time of an alleged right and to accept in exchange a maximum period of ten years was not an appreciable concession, the word concession had no meaning. The Colombian delegation accepted that stipulation solely because it believed that it was only fair to allow for the economic, and even humanitarian, reasons justifying the temporary recognition of the interests of fishing States, whose traditional practices should not be suddenly stopped. The best method to strengthen and consolidate the so-called historic rights for ever would be to fail to change the present situation by adopting intransigent attitudes rather than approve the proposed transitional system and accept the ten-year period in order to put an end to a situation which had arisen precisely because there had as yet been no international rule on the territorial sea and fishery limits.

21. Since the Colombian delegation would vote for the joint Canadian and United States proposal, it could not support the Argentine (A/CONF.19/C.1/L.11) or Guatemalan (A/CONF.19/C.1/L.12) amendments. Although the first Argentine amendment was unobjectionable in substance, it would annul the compromise provision; an uninterrupted period of thirty years could not be invoked by the nationals of any State, seeing that six years of war had interrupted the period 1930-1960. The phrase which the Guatemalan delegation wished to insert in article 3 of the joint proposal was implicit in the proposal itself, since fishing " in a lawful manner and without opposition from the coastal State " were the prerequisites for fishing continuously in any area of the sea.

22. The Colombian delegation would abstain from voting on the eighteen-Power proposal, since to vote for it would be incompatible with voting for the Canadian and United States proposal and to vote against it would be contrary to Colombian domestic law which would remain in force as long as Colombia did not sign and ratify an international convention modifying it.

23. With regard to recognition of special situations and preferential rights of coastal States, the Colombian delegation would accept the existence of special situations where a people's livelihood or economic development depended mainly on coastal fishing. To deny a country in such circumstances preferential rights would be to commit an injustice and thus to infringe the basic right of States to protect their existence as international legal entities. It could not, however, accept any proposal that left it to the State concerned to make a final unilateral determination of the exceptional conditions it was invoking and of the preferential rights which it was claiming to exercise, nor any proposal which lacked provisions for the peaceful settlement of disputes within a reasonable time. The Icelandic proposal (A/CONF.19/C.1/L.7/Rev.1), the Peruvian proposal (A/CONF.19/C.1/L.8) and the second Argentine amendment all contained elements, which, if combined, might have made up the appropriate formula, but none by itself entirely fulfilled the required conditions. The Colombian delegation would therefore abstain from voting on them.

24. None of the formulae in itself was ideal. Had it been so, the Conference would already have ended amid universal satisfaction. Colombia's lay between the two parties, and it had welcomed the formula which it considered the best compromise because it was seeking a constructive solution, not because it was set on any one proposal nor because it wished to defend the special interests of certain States.

25. Mr. QUIROGA (Spain) said that if the solution of the various problems raised by the régime of the high seas was to be effective and lasting, it would have to be based on the general principles expounded by the Spanish delegation at the 5th meeting of the Committee. His delegation would have preferred a regional solution of special problems, which would have permitted it to support the claims of some Latin American countries without advocating unrealistic and unnecessary formulae for seas which constituted a source of supply for the Spanish people. Unfortunately, that idea had not been embodied in a concrete proposal.

26. None of the proposals before the Committee solved the problem satisfactorily, and the Spanish delegation must simply select the proposal nearest to an appropriate solution; that was the proposal submitted by Canada and the United States (A/CONF.19/C.1/L.10).

27. It was unfortunate that the original United States proposal (A/CONF.19/C.1/L.3) had been withdrawn, since, combined with the provisions of the Convention on Fishing and the Conservation of the Living Resources of the Sea adopted in 1958, it might have offered a reasonable solution. Spain was interested in an orderly exploitation of the resources of the sea, which, unfortunately, were not inexhaustible. That fact justifiably perturbed coastal States, when fishing fleets from distant ports approached their coasts, but it equally perturbed the fishermen whose livelihood depended on the sea. The desire to reserve exclusively for the nationals of coastal States the right to fish in certain areas of the sea at present belonging to the high seas under positive law was, it might be thought, a primitive defensive reaction which was incompatible with modern developments in international institutions. The true solution should be sought rather by way of international co-operation in the protection and conservation of the living resources of the sea, not by preventing the exploitation of those resources when that could be done without prejudice to special or communal interests. It was in that spirit that the Spanish Council of Ministers had decided to accede to the 1958 Conventions and would shortly lay them before Parliament.

28. There would be no desire to appropriate the fisheries in a given area of the sea if the preservation of the resources of the sea were assured, if effective machinery were set up to prevent excessive fishing, and if that machinery were combined with a recognition of the preferential right of coastal States where restrictions might have to be placed on the volume of the catch. In some cases coastal States did not engage in intensive fishing, although they had the great advantage over other States whose ships had to sail hundreds of miles of being close to the fishing banks. In such cases, the final result of establishing exclusive fishing areas could only be to reduce the amount of food available for mankind, although the population of the coastal State or the international community would derive no benefit from it. Spanish fishing boats had for centuries fished for cod and whale off Newfoundland and for decades had fished off the coasts of Iceland, Ireland, France, Portugal and Morocco, the boats of those countries likewise fishing in the vicinity of the Spanish seas.

29. The Canadian and United States proposal was the furthest limit to which Spain could go. Of the 140,000 crew working in Spanish fishing boats (16,500 craft, excluding rowing boats) some 50,000 fishermen working in 3,350 boats would be affected by the new regulation making it impossible to fish between six and twelve miles outside territorial waters. It was estimated that the loss in wages would amount to 900 million pesetas ($15 million). It would obviously be difficult to retrain a large proportion of the fishermen if they were thrown out of work. The total Spanish catch, amounting to some 800,000 tons, was wholly consumed in the country, whose people needed the fish for food, as it provided the protein which other countries with a different eco-

nomic structure could obtain from stockbreeding and its products.

30. Although well aware of the sacrifice it was making, Spain would make a real effort at international collaboration and would therefore vote for the joint Canadian and United States proposal.

31. Mr. MULLHAUPT (Nicaragua) observed that it had been stated that the Conference had not been sufficiently well prepared and that the subject might not yet be ripe for complete solution. The Conference must dispel such apprehensions. The breadth of the territorial sea was subject, like all other aspects of international law, to continuous development and to the continuous play between right and force, the rule and the exception. At different periods different breadths had been accepted. What had now to be found was a rule representing a compromise solution. Such solutions could be achieved only by sacrifices on the part of all concerned. The territorial waters must be kept as narrow as possible in order to safeguard the interests of all nations. As between proposals for a twelve-mile limit and the proposals seeking a balance between the interests of the coastal States and the international community, the Nicaraguan delegation unhesitatingly supported the joint Canadian and United States proposal, which was clear and simple to apply: six miles of territorial sea and an additional six miles for fishery limits, without prejudice to existing bilateral or multilateral agreements and the possibility of concluding such agreements in the future. In the present state of the development of international law and, in particular, of the law of the sea, that proposal was undoubtedly the most satisfactory.

32. Mr. GARCIA SAYAN (Peru) wished to sum up his country's position before the various proposals were put to the vote. Peru's sovereignty over its seas was determined by the decree of 1947, and by the declaration and subsequent agreements concluded between the countries of the South Pacific. Peru could not consider any change in its position, which was based on those instruments, without compensatory measures to meet its rights and needs.

33. Its rights were the natural rights of a coastal State facing an immense ocean and defending, as part of its inheritance, the exceptional fishing resources of the sea adjacent to its coasts up to the limits justified by technical surveys. Its requirements were those of a country whose people had one of the lowest nutrition indices known, and at the same time a rate of growth that would double the population in twenty years. The fisheries made up for the aridity of the coast and the marked alimentary deficiencies which resulted therefrom. Peru had given extraordinary proof of its ability to derive advantage from its marine wealth; without trespassing on the seas of other countries, it had become one of the world's principal fishing countries. The people's diet was improving, and the fishing industry played today a part of first importance in the national economy. Peru did not exclude foreign fishermen who conformed to its regulations, which took into account the need for safeguarding the food supply of the birds which produced, in the form of guano, an essential fertilizer for Peruvian agriculture. But a large proportion of the catch brought in by Peruvian fishermen was made beyond the limits provided for in the proposals submitted to the Conference. If it accepted any of those formulae, Peru would be both robbing itself and exposing itself to all kinds of depredations by foreigners. That was why it had not accepted the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas, which tended to bring the coastal State down to the level of a junior partner in the exploitation of the living resources of its shores.

34. In order therefore that the Conference might achieve positive results based on justice and equity, Peru had submitted a draft resolution (A/CONF.19/C.1/L.8) [1] to be discussed and voted on by the plenary Conference. That proposal would give the coastal State, in exceptional cases, a preferential fishing right which would depend on the part played by fisheries in its economy and on the information obtained from geographical, biological and economic studies and surveys. Meanwhile Peru would vote against all proposals on the breadth of the territorial sea and the contiguous fishing zone which were incompatible with its accepted standards. It would vote for all or part of those proposals which favoured the recognition of exceptional situations or preferential rights. It would do so with the sole purpose of defending the principle of exceptions, which had already been accepted at the 1958 Conference, though by a resolution whose terms rendered the preferential right of the coastal State illusory.

35. Sir Kenneth BAILEY (Australia) said that his delegation would support the joint proposal by Canada and the United States (A/CONF.19/C.1/L.10) in all of its three aspects: the six-mile territorial sea, provided for in paragraph 1; the twelve-mile fishing zone provided for in paragraph 2; and the transitional arrangements provided for in paragraph 3. He paid a tribute to the spirit of compromise in which the joint proposal had been conceived and worked out. There was a tendency to be too abstract about States and their sacrifices; States were simply the juridical expression of peoples, and the rights expressed in the joint proposal were those of thousands of simple people in the countries represented at the Conference. It was a matter of extreme difficulty for Governments to put forward a proposal which represented a sacrifice by all those peoples, irrespective of whether they lived in coastal States or non-coastal States.

36. A six-mile territorial sea would undoubtedly restrict the three major rights of navigation, fishing and overflight, which made up the freedom of the seas and were enjoyed in common by nationals of all States. His delegation considered, however, that the curtailment of those three rights by a six-mile territorial sea could be accepted as a matter of practical adjustment. The representative of the Soviet Union had contended that no one at the Conference proposed to restrict the freedom of the seas. It was an incontrovertible fact that all the proposals before the Conference would have the effect of restricting it in some measure. Australia felt that a twelve-mile territorial sea would result in too drastic a curtailment of the areas in which the three major freedoms could be exercised without qualification. It was a plain matter

[1] Same text as document A/CONF.19/L.5.

of law that there was no general right of overflight corresponding to the right of innocent passage in the territorial sea itself.

37. His delegation could not accept the amendment submitted by Argentina (A/CONF.19/C.1/L.11) to paragraph 3 of the joint proposal by Canada and the United States. By definition, fishing in the outer six miles of the fishing zone had been as of legal right. The period of thirty years, which Argentina proposed to substitute for the five-year period during which States must have made a practice of such fishing, might have some relevance to accustomed periods of prescription. The question, however, was not one of prescription, but of whether States could be expected to surrender instantly rights which they had exercised under international law; it was the rights of people habitually and actively engaged in the fishing industry that were involved. It would be inequitable to insist on the uninterrupted exercise of fishing rights for thirty years before the Convention would provide for their continuance, since most fishing practices in most States had been drastically interrupted by wartime conditions, a situation for which the Argentina amendment made no provision.

38. The second Argentine amendment was also unacceptable. The rights of the coastal States in respect of fishing on the high seas beyond the contiguous zone had been carefully worked out in the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas, and questions so precisely settled in that Convention should not be re-opened. If the proposal had been that there should be further study of the difficult and controversial matters involved, the position of Australia would have been different, but it held the firm opinion that such matters could not be considered at the present Conference. The term " adjacent to its exclusive fishing zone " required clarification. The amendment proposed that all coastal States in all circumstances should have a preferential right of fishing, and Australia could not support such a wide breach in the 1958 Convention.

39. The representatives of Saudi Arabia and the Soviet Union had analysed the meaning of compromise. Their proposals meant that no State could be expected to change its position if, in theory or practice, it recognized a territorial sea of more than six miles. A compromise involved a change of position by all the States which were parties to it. The States which had sponsored and supported the joint Canadian and United States proposal had changed their positions in every respect. As a compromise, the Australian delegation supported it and invited the support of others.

40. Ato GOYTOM PETROS (Ethiopia) said that his country, one of the sponsors of the eighteen-Power proposal (A/CONF.19/C.1/L.2/Rev.1), would be unable to vote for the proposal submitted by Canada and the United States (A/CONF.19/C.1/L.10). That proposal was even less acceptable than the original Canadian proposal (A/CONF.19/C.1/L.4), which did not recognize historic rights, and seemed therefore not to deserve the praise which its authors had received for their conciliatory spirit. Though the joint proposal was a compromise, it was a compromise between two trends in the same body of opinion, and the supporters of the contrary opinion had no part in it.

41. It had been alleged that the supporters of the twelve-mile limit had not so far displayed any desire to reach a compromise and wished only to impose their will. The Ethiopian delegation had come to the Conference with a sincere desire for compromise, but it was difficult to make concessions when a country's right to extend its territorial sea up to a limit which did not violate any standard of accepted international law was denied. It had also been asked what benefit the coastal States would derive from an extensive territorial sea which they would find it difficult and costly to guard and exploit. The supporters of the twelve-mile limit might not possess the technical resources to exploit their marine wealth in the most rational way, but it was not by giving up those rights that they would be able to remedy a situation which some might consider inferior but which was only temporary.

42. Was it contrary to international law to possess a territorial sea whose extent, even though excessive in the view of some States, was in accordance with a legitimate right ? The answer was obviously in the negative. Was the fact that a twelve-mile territorial sea gave a coastal State thousands of square miles of sea a sufficient reason, in logic or law, why it should share that sea with other States ? Territorial sea had the same status as land territory, which a State could not yield. It would be neither valid in law nor morally just to ask States whose national territory was very extensive, but still unexploited and even unexplored, to surrender part of that territory to those who wanted more.

The meeting rose at 1.05 p.m.

TWENTY-EIGHTH MEETING

Wednesday, 13 April 1960, at 3.15 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.2/REV.1, L.7/REV.1, L.9 TO L.12) *(concluded)*

1. The CHAIRMAN said that the Committee would proceed to vote on the proposals and amendments before it. In accordance with rule 41 of the Conference's rules of procedure, they would be put to the vote in the following order: the eighteen-Power proposal (A/CONF.19/C.1/L.2/Rev.1); the Icelandic proposal (A/CONF.19/C.1/L.7/Rev.1); the Argentine amendments (A/CONF.19/C.1/L.11) to the joint Canadian and United States proposal; the Guatemalan amendment (A/CONF.19/C.1/L.12) to the same proposal; and finally, the joint Canadian and United States proposal (A/CONF.19/C.1/L.10).

2. Mr. DE PABLO PARDO (Argentina) announced that, in order to facilitate agreement in the Committee, his