Second United Nations Conference on the Law of the Sea

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Third 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)*

cases, even justify the exclusion of foreign fishermen, if such exclusion became necessary for purposes of conservation, in other words, where the total catch of a stock or stocks of fish had to be substantially curtailed. Maximum protection would thus be given to the legitimate interests of the coastal State in a way which would be impracticable with a contiguous zone that must necessarily be limited in scope. Moreover, that desirable result would be attained without conferring upon the coastal State rights and obligations unrelated to fisheries, and prerogatives which it might exploit to the detriment of the legitimate interests of others.

20. There remained the important question of historic fishing rights — one of great interest to Cuba. Such rights would come into conflict with the rights of the coastal State wherever the latter extended its territorial sea beyond the traditional limits or claimed exclusive rights in respect of fisheries beyond the outer limit of the territorial sea, thereby affecting areas of the high seas in which the nationals of another State had been fishing constantly from time immemorial. The State whose nationals had thus traditionally fished an area of the high seas could be said to have acquired prescriptive fishing rights in that area; those rights could carry even greater weight than those of the coastal State itself—for example, where the latter's nationals engaged in little or no fishing activity in the area. And that argument was even more cogent where the activities of the nationals of the coastal State were such that they could not possibly affect the productivity of the local fish stock or stocks.

21. The situation was changed if the rights accorded the coastal State were preferential and not exclusive. Preferential rights would justify limitation of the total catch of fish only where that was essential to proper conservation—in other words, to maintain or restore the optimum sustainable yield of a fish stock or stocks. The attainment of that objective was of concern to all States whose nationals fished the resources, and their general interest would be served even when it became necessary temporarily to exclude fishing by States other than the coastal State in the interests of conservation. But experience showed that conservation did not normally demand such drastic curtailment of fishing. Nevertheless, where a conflict arose between historic rights and the preferential rights of a coastal State, the latter should prevail in the two cases envisaged by resolution VI of the 1958 Conference. That solution was consistent with contemporary trends in international law, as evidenced by the proceedings of the 1958 Conference. The only prerogative which could be recognized in that situation if a State possessed historic rights was the right to special or preferential treatment as compared to other non-coastal States. It would be illogical and unfair, when placing restrictions on fishing, to treat identically one State whose nationals had been fishing uninterruptedly and from time immemorial in certain sea areas and another whose nationals had only recently begun to fish there.

22. The position was different in the third of the three cases mentioned earlier—namely, that of a coastal State whose nationals were habitually engaged, in an area contiguous to its territorial sea, in fishing activities which were of economic importance to it. But there could be not doubt that the special interest of the coastal State should, even in that third type of situation, prevail over the interests of non-coastal States in general. Where historic rights could be invoked, however, reason and justice required that those rights be given equal protection with the preferential rights of the coastal State. If it became necessary for the purposes of conservation to limit the total catch of a stock or stocks of fish in a given area, both the nationals of a coastal State therein and those of a State possessing historic rights were entitled to the same preferential treatment over foreign fishermen. As a rule, such treatment of historic rights would not materially affect the interests of the coastal State; indeed, it would not affect those interests at all in cases where the nationals of the State invoking its historic rights exploited the resources concerned on such a small scale that their productivity was unaffected.

The meeting rose at 11.50 a.m.

THIRD MEETING

Wednesday, 23 March 1960, at 10.45 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)*

GENERAL DEBATE *(continued)*

Statements by Mr. Tuncel (Turkey), Mr. Mau (Republic of Viet-Nam and Mr. Martínez Moreno (El Salvador)

1. Mr. TUNCEL (Turkey) associated himself with the appeal for wisdom, skill, patience and conciliation on the part of all delegations, made by the President of the Conference at the first plenary meeting. Circumstances were more propitious to agreement than they had been in 1958, because States appeared to be better prepared for the examination of the complex problems involved. The almost continuous contacts maintained since the first United Nations Conference on the Law of the Sea had certainly contributed greatly to a better understanding of the various issues, and he hoped that all those taking part would do their best to smooth out divergencies of view arising from conflicting economic or political interests.

2. In 1958, the Turkish delegation had declared itself willing to accept a three-mile limit to the territorial sea if that proposal commanded general support.[1] However, it was no exaggeration to say that States were tending to claim greater breadths. His delegation believed that in dealing with that issue the present Conference should endeavour to ensure freedom of navigation and flight to the greatest possible extent.

[1] *Official Records of the United Nations Conference on the Law of the Sea,* vol. III, 14th meeting, para. 36.

3. In attempting to reconcile conflicting economic interests, the Conference would undoubtedly take into consideration the fact that some States deployed considerable resources and manpower for fishing in zones contiguous to the territorial sea of other States, whereas for coastal States the zones contiguous to their own territorial sea were important because they contained rich fishing grounds. In addition, the present and future interests of under-developed countries, as well as of those countries whose peoples depended on fisheries, either economically or as a source of food, had to be taken into account. As the work proceeded it would become easier to see how those conflicting claims could be satisfied, and he urged the interested parties to display mutual understanding. When the question of world fishing grounds was considered from that angle, it seemed that the problem of fishing was a regional one, and that it could therefore be solved better by means of bilateral or regional agreements. Any formula the Conference might ultimately adopt would have to recognize the fishing rights of coastal States within a zone up to twelve miles broad.

4. He pledged his delegation's full co-operation in the joint effort to reach agreement: as the President had warned the Conference, failure to do so would serve neither the interests of the participating States not those of the peoples of the world.

5. Mr. MAU (Republic of Viet-Nam) observed that it had been wrongly said that the first United Nations Conference on the Law of the Sea had failed to achieve its purpose. That purpose had been to single out from a mass of unilateral practices anarchically applied those which corresponded to rules of law, so that they could subsequently be adapted to the new needs of mankind and to the aspirations of emergent States. The results of the first Conference had been encouraging in that the ground had been cleared and divergent points of view brought closer together. In particular, the first Conference had achieved a positive result of unsuspected scope by emphasizing the principle that a distinction must be drawn between the determination of the breadth of the territorial sea and that of fishery limits, a principle by which the powers of coastal States would not be cut off abruptly at the outer limit of their territorial sea, but would rather become gradually less as the distance from the coast increased. This principle led to the recognition of a stretch of fishing waters for the enjoyment of coastal States outside their territorial sea. His delegation would base itself on that principle in defining its position on the two items under discussion.

6. With regard to the breadth of the territorial sea, it should be remembered that at the first Conference it had transpired that the so-called three-mile limit could not be maintained, despite the support lent to it by the leading maritime powers, because it did not correspond to any rule of positive law that could be imposed on the international community as a whole. It was for the second Conference to establish a universally valid rule. The fact that the States traditionally attached to the breadth of three miles had come to accept the principle of a six-mile limit was encouraging, since it gave grounds for hope that those States which had hitherto pressed for the adoption of a breadth of twelve miles would in turn consider making concessions.

7. Furthermore, the provisions governing the contiguous zone and the explicit recognition of a fishing zone situated outside the territorial sea would in practice offset any concessions granted. The Viet-Nam delegation believed that the Conference should be guided by the principle of the freedom of the high seas, since extension of the breadth of the territorial sea to twelve miles would be an encroachment on the common heritage of the resources of the sea. Any proposal which would have each State free to choose for itself between a width of three miles and one of twelve miles involved a risk that must not be lost sight of, because if the Conference were to adopt such a proposal, far from rendering a service to mankind, it would not only allow the prevailing confusion to subsist but would give it legal sanction.

8. The Government of the Republic of Viet-Nam was therefore in favour of adopting a uniform width of six miles. It was self-evident that the new six-mile limit would have to be applied within the framework of the provisions of the Convention on the Territorial Sea and the Contiguous Zone. In particular, when the coasts of two States were opposite or adjacent, the median line was that which should form the limit of their respective territorial seas. His delegation attached great importance to that statement, since the Republic of Viet-Nam possessed the Phu-Du Archipelago, near Phu-Kwok Island, which extended along the coast of Cambodia at a distance of less than six miles from it. The Government of Viet-Nam accordingly reserved all its rights over the archipelago, over which it exercised exclusive sovereignty, together with its rights over the territorial sea surrounding it, in accordance with the provisions of conventions already adopted.

9. Turning to the question of the determination of fishing limits, he said that it would be for the Conference to elaborate the principle already accepted at the first Conference, that the fishing rights of coastal States extended beyond their territorial sea. There could be no uniform solution to that problem, which brought the interests of coastal States and those of non-coastal States into conflict; it would be more realistic to deal with special situations on their merits. Most coastal States would, it seemed, be prepared to agree to a uniform determination of fishing limits. But it must not be forgotten that flagrant injustices might result from such rigidity. For some countries, including Viet-Nam, coastal fisheries were of vital importance; the rich harvest of the sea provided the people's daily food. Moreover, such countries still had but very rudimentary fishing craft and gear, which would restrict their activities to coastal fishing for a long time to come. It would therefore be unfair to impose on them the limits fixed for States which were technically equipped for intensive fishing on the high seas. It was those considerations which had moved the Viet-Nam delegation, in company with the Philippines delegation, to submit to the 1958 Conference a proposal [2] according to which the fishermen of a coastal State who derived their subsistence and that of the other inhabitants from fishing, and who engaged in fishing mainly on the coasts of that State, would have a preferential fishing right in a given area

[2] *Official Records of the United Nations Conference on the Law of the Sea*, vol. V, annexes, document A/CONF.13/C.3/60.

of the high seas off the coasts of the said State. It had also been laid down that no coastal State was entitled to prohibit the nationals of other States from fishing within that zone, once the needs of its own population had been reasonably secured. That proposal had unfortunately not been adopted. Nevertheless, the situation of countries where the basic food supply of the population came from coastal fisheries and where the methods used were essentially those of local fishing, deserved special legal protection. For that reason, the Viet-Nam delegation intended to re-submit the problem to the second Conference. The claims involved were reasonable ones, intended to secure recognition of a preferential right that would amount to no more than strict justice.

10. Non-coastal States would be affected in varying degrees, according to their situation, by such extension of coastal rights. It was therefore not feasible to subsume them under one single category, and it was for the Conference to find an equitable solution to that problem. A compromise might perhaps be reached by recourse to the idea of a preferential right based on suitable criteria.

11. Mr. MARTINEZ MORENO (El Salvador) said that the importance of the questions of the breadth of the territorial sea and of fishery limits was self-evident, because the natural resources of sea areas contiguous to coasts were a source of immense wealth. For some countries that wealth merely provided an opportunity of increasing national income and conducting profitable activities; but for many of the so-called under-developed countries it represented a major part of their limited national resources. The difficulties obstructing a settlement were enhanced by the international anarchy prevailing in state claims over sea areas, and by the changing and sometimes inconsistent attitude taken by certain countries at different times in order to protect their transient interests under changing conditions. It was for those reasons that the fathers of the *mare clausum* doctrine had now become the ardent defenders of unrestricted freedom of the seas, and that certain countries, whose apparent claims regarding the territorial sea did not involve a breadth exceeding twelve miles, applied such peculiar methods of measurement that it was virtually impossible to establish the true extent of their claims.

12. In the case of El Salvador, there was the additional difficulty that the extent of the territorial sea was laid down in the Constitution, which was not of the flexible type. That instrument stipulated for the territorial sea a breadth of 200 nautical miles measured from the low-water mark, with the explicit proviso that El Salvador recognized and guaranteed international freedom of navigation in the widest sense.

13. Despite the explicit terms of his country's Constitution, his delegation, in a spirit of conciliation, wished to announce that if the Conference succeeded in concluding specific agreements on the questions that had been referred to it, the Government of El Salvador would submit to the Legislative Assembly proposals seeking to ensure that the provisions of the Constitution would be implemented in harmony with internationally agreed rules, by establishing a zone of absolute freedom of fishing and navigation in the wide belt of the country's adjacent waters.

14. For his country, the observance of rights established by the law of nations was more important than the determination of the breadth of the territorial sea and fishery limits. But the basic aims of the law of nations would not be served if, for example, agreement was reached on a definite breadth for the territorial sea while at the same time the right of innocent passage was not respected. El Salvador, as his delegation had stated in the general debate in the First Committee at the 1958 Conference,[3] was more concerned with the enforcement of the principles of international law than with their formulation, and preferred for its part to have a wider territorial sea while respecting the rights of others in it; that situation was better than one in which a narrow territorial sea was combined with abuse of the principle of the freedom of the seas.

15. El Salvador had never endeavoured to win recognition as a general principle of international law for its own rules on the breadth of the territorial sea. It considered that every State was entitled to fix the breadth of its own territorial sea, provided that it did so with due regard for the rights of other States. He drew attention in that connexion to the opinion expressed by the eminent Cuban jurist, Mr. Bustamante:

> " No nation can rightly constitute itself the judge and sovereign of another, refusing to recognize the legitimate and necessary exercise of its authority on the seas or on land. Certainly, a country having three miles as the limit of its territorial sea, and which refuses to recognize four miles to another, would strongly protest if one or more States were satisfied with two miles and notified it that they were not agreeable to accepting the third mile. And this the more so as, in the course of history, the same claimant nation, wishing to impose its will as a law for the world, will in past days have had different legal measures to this end." [4]

16. One of the most remarkable features of the international scene over the past ten years had been the emergence of a strong interest on the part of the statesmen of all countries to promote the economic development of the under-developed areas of the world with the aim of raising the living standards of the inhabitants of those areas. It was with that aim in view that many States whose nationals had until recently not engaged in fishing, and whose waters had at times been subjected to over-fishing by foreign fishermen, had begun to assert their legitimate rights. A number of Latin-American countries, including Costa Rica, Chile, Ecuador, Honduras and Peru, had claimed in the past, or were still claiming, jurisdiction over a sea belt 200 miles wide; certain other countries, such as Argentina and Uruguay, had, with considerable logic, contended at meetings of American States that States enjoying rights over the continental shelf, which in places extended to some 400 miles from their coasts, should enjoy similar rights in respect of the superjacent waters. He also drew attention to the defence zone established by the American republics, which was still in force and which extended 300 nautical miles offshore.

[3] *Ibid.*, vol. III, 16th meeting, para. 24.

[4] Antonio Sanchez de Bustamente y Sirven, *The Territorial Sea* (New York, Oxford University Press, 1930), p. 107, para. 157.

17. It was no doubt for that reason that Mr. François, the Special Rapporteur of the International Law Commission, in his second report on the high seas (A/CN.4/42),[5] had expressed the view that the coastal State should have the right to adopt conservation measures and measures against pollution of the sea by oil over a belt 200 miles wide.

18. El Salvador had consistently shown the most scrupulous respect for the freedom of peaceful navigation, the freedom of fishing, the freedom to make commercial flights over the territorial sea and the freedom to lay submarine cables and pipe-lines. In his delegation's opinion, the Conference should focus its attention on securing effective protection for the rights of the international community, particularly in view of the fact that the special interest of the coastal State in fisheries had been recognized as well as the sovereign rights of States over their continental shelf. The determination of the breadth of the territorial sea and fishery limits would no doubt constitute a victory for the rule of law; but it was even more important that, whatever the limits established — and in view of the pressing human and social needs of the day it was clear that those limits could not be narrow — the rights of the international community in the sea areas concerned should be adequately and effectively protected.

The meeting rose at 11.50 a.m.

[5] Original French text published in *Yearbook of the International Law Commission, 1951*, vol. II (United Nations publication, Sales No.: 1957.V.6, vol. II), p. 75. English translation mimeographed.

FOURTH MEETING

Thursday, 24 March 1960, at 10.45 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)*

GENERAL DEBATE *(continued)*

Statements by Mr. Petrén (Sweden), Mr. Dean (United States of America), Mr. Moreno (Panama) and Mr. Radoulsky (Bulgaria)

1. Mr. PETREN (Sweden) observed that there were many States which were unable to accept a breadth of twelve nautical miles for the territorial sea or for contiguous zones in which the coastal State would enjoy exclusive fishing rights. Sweden was one of them, and the Swedish delegation had already explained, at the first United Nations Conference on the Law of the Sea, the legal and practical arguments on which its position rested. He would not repeat those arguments, but wished to remind the Committee that the questions of the breadth of the territorial sea and of fishing limits must be considered in the context of current law. Some delegations which were in favour of extending the breadth of the territorial sea to twelve miles had wrongly interpreted article 3 in the rules drawn up by the International Law Commission,[1] which merely stated that an extension of the territorial sea beyond twelve miles was certainly inadmissible. The differences of opinion which had emerged later had prevented the Commission from reaching a decision on any breadth of the territorial sea within that limit. The Swedish Government was of the opinion that international practice, as a general rule, did not admit limits for the territorial sea beyond six nautical miles. Certain States had recently proclaimed an extension of the breadth of their territorial sea to twelve miles, thus appropriating to themselves vast stretches of waters hitherto regarded as part of the high seas, but those unilateral decisions had elicited an array of protests from the international community. The Swedish delegation rejected the argument that the mere fact that the interest of a coastal State demanded that it unilaterally extend its territorial sea was sufficient to confer upon such extension the sanction of law, even though it was highly detrimental to the traditional interests of one or more other States.

2. The danger of such ideas to good international relations was patent. Admittedly, law must be as free to develop in the maritime as it was in other spheres, but that development must be compatible with fundamental principles and must proceed with the concurrence of as many States as possible. It had been that concern for caution which had led the Swedish delegation to propose at the first Conference that the breadth of the territorial sea should be fixed by the coastal State, but that it should not exceed six nautical miles.[2] That in itself would entail a generous concession on the part of States which normally recognized only narrower territorial seas. An extension of the breadth of the territorial sea would injure the interests of the international community, especially in the matter of navigation.

3. With regard to fishing limits, the Swedish Government was not convinced of the need for creating such zones in which fishing rights would be reserved exclusively to the coastal States. The Convention on Fishing and Conservation of the Living Resources of the High Seas was relevant in that connexion. Adopted at the first Conference for the purpose of protecting and preserving stocks of fish and other biological resources of the high seas, that instrument paid due regard to a coastal State's special interest in maintaining the productivity of biological resources in every part of the high seas adjacent to its territorial sea. The first Conference had also adopted a resolution[3] dealing with the situation of countries or territories whose people were over-whelmingly dependent upon coastal fisheries for their livelihood and whose fishing methods were mainly limited to local fishing from small boats. That resolution recommended that the preferential requirements of the coastal State should be recognized, while having regard to the

[1] *Official Records of the General Assembly, Eleventh Session, Supplement No. 9*, p. 4.

[2] *Official Records of the United Nations Conference on the Law of the Sea*, vol. III, annexes, document A/CONF.13/C.1/L.4.

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