Second United Nations Conference on the Law of the Sea

Geneva, Switzerland
17 March – 26 April 1960

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Fourth Meeting of the Committee of the Whole

Extract from the *Official Records of the Second United Nations Conference on the Law of the Sea (Summary Records of Plenary Meetings and of Meetings of the Committee of the Whole, Annexes and Final Act)*

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. Radouilsky (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.

interests of the other States. In the Swedish delegation's opinion, the provisions of the Convention and the resolution should suffice to safeguard the legitimate interests of coastal States. They might be taken as a basis for drafting detailed instruments for each particular case, a procedure that would be better than fixing general and rigid rules that could not possibly take account of the special situation of every coastal State.

4. The Swedish Government was opposed, therefore, to the establishment, by virtue of a general resolution, beyond the territorial sea of fishing zones reserved to the coastal State. The Swedish delegation had been moved solely by a spirit of compromise in voting at the first Conference for the draft resolution submitted by the United States delegation involving the recognition of such fishing zones, in which, however, the acquired rights of States other than the coastal State had to be upheld.[4] As that draft resolution had not commanded the two-thirds majority, the Swedish Government considered itself free to revert to its principles.

5. Mr. DEAN (United States of America) said that, although a large measure of agreement had been reached at the first United Nations Conference on the Law of the Sea, the Conference had been adjourned with its work only partially completed, not because the possibilities for agreement had been exhausted, but for lack of time. His Government believed that agreement on the two issues before the present Conference was intrinsically of great importance, and that it could be achieved if countries allowed themselves to be guided by a spirit of compromise. So long as the crucial question of the reach of a State's sovereignty over the waters adjacent to its coast was unresolved, the law of the sea could not be regarded as having become a subject of international accord, and the purpose of the 1958 Conference—namely, to promote the progressive development and codification of international law in the maritime sphere—would remain unfulfilled. Furthermore, the absence of international agreement on the issues before the Conference had in recent years begun to disturb hitherto amicable relations among countries with regard to the law of the sea, and lack of clarity in those aspects of the law had given rise to disputes. He did not need to dwell on the grave dangers inherent in such uncertainty, but wished to emphasize that failure to reach agreement at the present Conference would be a serious and unfortunate mistake. His Government regarded the present Conference as a resumption of the previous friendly deliberations and believed it appropriate to resume efforts at compromise where those deliberations had ended in 1958. Many countries, including his own, had preferred solutions to the issues before the Conference. In order to obtain agreement it would be necessary to refrain from pressing them, however.

6. The United States Government believed that a three-mile limit to the breadth of the territorial sea was in the interests of all nations, large and small, and preferred that there should be no exclusive fishing jurisdiction beyond that limit. In its view, efforts to maintain and improve the yield of fisheries were more likely to succeed when based on realistic conservation agreements between the parties concerned than when based on arbitrarily established lines in the ocean, which, indeed, would in many cases complicate such efforts. His country's position regarding the breadth of the territorial sea had been historically determined by its acceptance of the doctrine of freedom of the seas: the fundamental principle that the high seas were *res communis* and that no part of them could be unilaterally appropriated by any State for its own use without the concurrence of other States. The United States of America believed that the three-mile limit, which it had itself adopted in 1791, had well served the needs and interests of the international community, and was still the best suited to the needs of all nations.

7. Turning to some practical problems of navigation created by extension of the breadth of the territorial sea, he pointed out that, to see the shore-line at a distance of twelve miles a navigator's eye would have to be 110 feet above the water, a height rarely attainable on commercial or fishing vessels; to be seen, even under ideal conditions from a standard height of, say, 15 feet, from the same distance, any shore navigational aid would have to be at least 44 feet high. Many convenient charted landmarks visible from three miles would no longer be visible from twelve miles, and the " international lights " (as defined by the Fifth International Hydrographic Conference held at Monaco in 1947) would probably be too far apart to be of use for accurate fixing; secondary systems of lights and buoys would not be visible at such range. It had been estimated, moreover, that only one in five of the world's lighthouses had a range of twelve miles or more. It was therefore conceivable that a nation's entire system of navigational aids mights have to be rebuilt — perhaps even entirely replaced by an electronic system — to meet the new conditions imposed by an extension of the territorial sea to twelve miles. Finally, it would be virtually impossible for most merchant ships to anchor in waters twelve miles off-shore, where depths of 700 fathoms were often met.

8. It had been argued that the three-mile limit favoured the maritime nations more than other nations at present less active on the seas, but only by maintaining maximum freedom of the seas could all nations use the high seas to the fullest advantage in their development. Adherence to such a principle would allow the most direct and efficient routes to be used, thus helping to keep down transportation costs to the benefit of all nations. In the self-interest of all nations, that limit should be continued. The United States would, therefore, adhere to that limit if agreement could not be reached at the Conference.

9. He emphatically denied that the International Law Commission had implied, at its eighth annual session, that any breadth of territorial sea beyond three miles was authorized under international law, and quoted from the statement made by Mr. François, the Commission's Special Rapporteur on the subject, at the first Conference. Mr. François had confirmed that the Commission had expressed no opinion on whether it was lawful or unlawful to fix the breadth of the territorial sea between three and twelve miles.[5]

[4] *Ibid.*, vol. II, 14th plenary meeting, para. 60, and annexes, document A/CONF.13/L.29.

[5] *Ibid.*, vol. III, 21st meeting, annex, para. 18.

10. He had adduced those arguments in favour of the three-mile limit, not because his Government was unwilling to seek a new rule provided others accepted it, but to remind the Conference of the reluctance with which his Government had decided that a proposal for a territorial sea broader than three miles should, in the circumstances, be submitted or supported by his country in order to secure agreement. He recalled that at the first Conference his delegation had proposed a six-mile territorial sea with an additional six-mile fishery zone under the jurisdiction of the coastal State, in which additional zone unlimited fishing by other States which had previously fished there might continue.[6] That proposal had been generally recognized as an honest and serious effort to reach a compromise, and thus had come closer than any other to adoption. But the proposal submitted by the Soviet Union at the last Conference and presented again at the present Conference (A/CONF.19/C.1/L.1) was not, in his opinion, a true compromise, although it might seem so to some by virtue of the apparent option it offered. Under such a régime of international law, nations preferring the narrowest limits for the territorial sea would in practice find themselves discriminated against, and would therefore find it increasingly difficult to adhere to such a narrow limit. Once many had chosen the greatest limit allowed, others would feel constrained to claim it too.

11. The United States Government believed that a twelve-mile territorial sea, whether by permitted option or otherwise, would be extremely prejudicial to the interests of the vast majority of the nations of the world. An extension of the territorial sea to twelve miles would bring most of the maritime routes of the world within territorial waters at some point in their length. Such an extended reach of national sovereignty over the sea would have a serious bearing on the absolute rights of transit through or over more than one hundred important international straits now part of the high seas. In the absence of a treaty or bilateral agreement, aircraft would have no right to fly over those straits, and the rights of passage of vessels would be altered. Because of those important considerations his Government could not foresee that any proposal for a width of territorial sea beyond six miles could be favourably entertained.

12. He recalled that, at the first Conference, a proposal had been submitted for a territorial sea of six miles coupled with a six-mile contiguous zone in which the coastal State would have exclusive fishing jurisdiction.[7] Such a proposal would undoubtedly find favour at the present Conference, as it had at the first, with certain coastal States that wished to secure exclusive fishing rights over a twelve-mile zone. Such a régime, however, would seriously affect the interests of a number of foreign States which had fished in the high-seas areas concerned for generations, and even centuries, many of them small countries for whom such exclusion would constitute a vital loss. It was therefore only fair that any fishing previously carried on in a high-seas area affected by extended jurisdiction should be taken into account in the formulation of a rule extending the fishing jurisdiction of coastal States. The United States delegation had not supported that proposal in 1958, because of the serious effect its adoption would have had on important United States fisheries and, even more so, on those of other countries.

13. At the first Conference some countries had objected to the fact that the United States compromise proposal had placed no limitation on future expansion of foreign fishing in the proposed outer six-mile zone. Within the time remaining at the disposal of the Conference it had not been possible to find a solution to that problem. After careful study and consultation with other countries, his Government had now concluded that some such limitation was practicable, and was therefore re-submitting its proposal with the incorporation of an important proviso to that effect. His delegation believed that the new proposal (A/CONF.19/C.1/L.3) was a practicable and reasonable compromise and one on which both coastal and fishing States should find it possible to agree. In effect, it would give coastal States additional and undisputed exclusive fishing jurisdiction in a zone three to six miles offshore, as well as fishing jurisdiction in a further contiguous nine or six miles of the high seas — in other words, a maximum of twelve miles — subject only to such foreign fishing in the outer six-mile zone as had been carried on in a base period. No increase in such foreign fishing would be permitted above the level that had prevailed in the base period, thus reserving for the coastal State all increased productivity in the area concerned. Under the proposal, States would in effect acquire exclusive jurisdiction over fishing in the outer six-mile zone in all cases where there had been little or no foreign fishing in that zone during the base period. He believed that would apply to most countries of the world. The proposal did not, however, attempt to deal with exceptional situations in which the economy of the State was overwhelmingly dependent on its coastal fisheries. His Government recognized that such situations existed and created problems to which the Conference should give sympathetic and careful consideration. His delegation was prepared to discuss with other delegations the matter of special treatment in the outer six-mile zone in such circumstances, and to consider appropriate proposals.

14. The United States delegation was ready to discuss the terms of its proposal, which it hoped would receive the widest possible support and contribute to the success of the Conference. It was prepared to give careful consideration to the views and suggestions of all countries.

15. Mr. MORENO (Panama) recalled that, in its resolution 1307 (XIII), the General Assembly had expressed its belief that agreement on the " two vital issues " of the breadth of the territorial sea and fishery limits " would contribute substantially to the lessening of international tensions and to the preservation of world order and peace ", thereby recognizing that economic security and well-being were essential to peace. For, in determining the breadth of their territorial sea and their fishery limits, States, particularly those whose economies were in process of development, were primarily guided by the need to safeguard the right of their peoples to live decently by drawing upon available natural resources for their economic development and the improvement of living conditions.

[6] *Official Records of the United Nations Conference on the Law of the Sea*, vol. II, annexes, document A/CONF.13/L.29.

[7] *Ibid.*, vol. III, annexes, document A/CONF.13/C.1/L.77/Rev.3.

16. The sea played an essential part in the economy of Panama, a country with an extensive coastline on the Atlantic and Pacific oceans: the canal which linked those two oceans crossed its territory; and in addition to that, Panama could hope to depend increasingly on the exploitation of the living resources of the sea.

17. With regard to the regulation of fisheries, his delegation considered that, on all important points, the Convention on Fishing and Conservation of the Living Resources of the High Seas adopted at the first Conference dealt adequately with the problem of conservation of fish stock or stocks of interest to the coastal State and with that of ensuring the optimum sustainable yield from those stocks. The Convention clearly recognized the special interest of the coastal State, which had already been acknowledged by the International Technical Conference on the Conservation of the Living Resources of the Sea held at Rome in April and May 1955. That Convention also contained provisions governing the settlement of disputes arising in connexion with the regulation of fisheries under its terms.

18. With regard to the breadth of the territorial sea, his delegation felt that the Conference should be guided by economic, social and public health considerations, which were of a universal nature, rather than by the narrow dictates of security or defence. The decision of many States to broaden their territorial sea had been dictated by the need to protect interests connected with economic development and with the needs created by a general growth in population.

19. His delegation did not believe that the Conference would adopt a rigid formula for fixing the breadth of the territorial sea, still less accept the outmoded three-mile formula as a rule of international law. Every State, by virtue of its sovereignty, was entitled to fix the breadth of its territorial sea in accordance with its needs. There was no reason why any State should renounce that intrinsic sovereign right other than by acceding to a universally accepted and binding multilateral instrument regulating the matter.

20. The three-mile rule had never been accepted in any general multilateral international instrument; it had been honoured only by virtue of international custom. It was in the nature of customary rules of law that they should give way to new rules as the causes or grounds in which they were rooted changed. And the validity of the three-mile rule had lapsed with the passing of the political, economic, military and other circumstances which might initially have commended it.

21. The passing of the three-mile rule did not, of course, mean that States had henceforth the unilateral right to extend their territorial sea arbitrarily, or beyond reasonable limits. Although state practice was not uniform in the matter, international law did not authorize the extension of the territorial sea beyond a permissible maximum breadth of twelve nautical miles. The position in international law had been admirably stated by the International Law Commission in article 3, paragraph 2, of its draft articles concerning the law of the sea:

> " The Commission considers that international law does not permit an extension of the territorial sea beyond twelve miles."

22. Thus the Commission had clearly laid down the principle that international law permitted extension of the territorial sea up to a maximum breadth of twelve miles. It was significant that, while thus recognizing the twelve-mile permissible maximum breadth as a rule of international law, the Commission had simply taken note in the following paragraph of the same article of the fact that certain countries did not recognize a breadth of the territorial sea greater than three miles, without in any way endorsing that claim:

> " The Commission, without taking any decision as to the breadth of the territorial sea up to that limit [twelve miles], notes, on the one hand, that many States have fixed a breadth greater than three miles and, on the other hand, that many States do not recognize such a breadth when that of their own territorial sea is less."

23. There was another decisive argument in favour of such an interpretation of article 3, paragraph 2. The International Law Commission, in paragraph 4 of its commentary on article 7 (Bays), had made the following statement relating to the closing line of a bay:

> " As an experiment the Commission suggested, at its seventh session, a distance of twenty-five miles; thus, the length of the closing line would be slightly more than twice the permissible maximum breadth of the territorial sea as laid down in paragraph 2 of article 3." [8]

Since the distance of twenty-five miles was described as only " slightly more than twice the permissible maximum breadth of the territorial sea ", there could be no doubt that the permissible maximum breadth laid down in article 3, paragraph 2, was twelve miles.

24. His delegation therefore considered that in enacting legislation to fix the breadth of the territorial sea at twelve miles the legislature of Panama had adopted a reasonable outer limit for that sea: one that conformed with international law and in no way ran counter to international practice. As the International Law Commission itself had pointed out, that practice had never been uniform, and different countries had variously fixed the breadth of their territorial sea at three, four, five, six, nine, ten, twelve and even two hundred miles. He had dwelt on international practice, because Panama had always been careful scrupulously to observe its international commitments, a line of conduct that entitled it to insist upon the observance of those international agreements to which it was party.

25. He hoped that the Conference would achieve its objectives and thereby help to maintain the rule of law in relations between States, great and small, thereby in turn making possible peaceful coexistence in an atmosphere of understanding of common problems.

26. Mr. RADOUILSKY (Bulgaria), noting that conditions augured well for the success of the Conference, appealed for good will and mutual understanding. The work of the first United Nations Conference on the Law of the Sea should be brought to its proper end by the conclusion of an agreement on the two interconnected

[8] *Official Records of the General Assembly, Eleventh Session, Supplement No. 9*, p. 16.

problems of the breadth of the territorial sea and fishing limits. Though the arguments adduced in favour of the various alternatives were already well known, the issues were admittedly complex because they involved vital national interests. Moreover, there was no preliminary draft before the present Conference to provide a basis for discussion. Hence there was great scope for negotiation in a spirit of peaceful coexistence.

27. His Government held that any coastal State was entitled to determine the breadth of its territorial sea within the limits of three to twelve miles, and had enacted legislation establishing the latter figure, which best suited its requirements, as it did those of newly emergent States which had only recently begun to establish their maritime rights.

28. Originally, the legal régime of the territorial sea had been determined by defence requirements. Clearly, with modern technical advances, a wider belt had become necessary, and was best provided by the twelve-mile limit allowed by international law. The need was the greater for those countries which did not have a powerful navy to defend their coasts. As Mr. Verdross had argued in his work on international law, each State was entitled to claim that breadth over which it could exercise effective and continuous sovereignty from land. But he had added that no State was entitled to encroach upon the established rights of others, and therefore was not free arbitrarily to extend its territorial sea.[9] In connexion with that last contention, it should be pointed out that the International Law Commission had expressed the opinion in the commentary on article 3 of its draft articles on the law of the sea that extension of the territorial sea up to an outward limit of twelve miles did not infringe the principle of the freedom of the seas. Accordingly, provided it could exercise effective sovereignty, a coastal State could fix the breadth of its territorial sea at any distance up to twelve miles.

29. Important interests of the coastal State, such as those relating to customs and public health regulations, civil and criminal jurisdiction and the conservation of the living resources of the sea, had to be safeguarded. Some States felt that that could best be done through a uniform régime under which the coastal State would have full sovereignty over the whole belt formed by the territorial sea and contiguous zones, whereas others advocated special zones for safeguarding special interests.

30. The argument that a territorial sea twelve miles broad would restrict freedom of navigation on the high seas was unconvincing, because all States recognized that merchant ships had the right of innocent passage through their territorial sea. Moreover, it in no way followed that the interests of States and of international shipping would in any way be affected by the universal adoption of such a breadth. Another argument adduced against the twelve-mile limit was that it would give rise to difficulty in delimiting the territorial sea of two States whose coasts were opposite each other, when the distance between them was less than twenty-four miles. That objection was equally groundless, because those cases usually pertained to straits, which were normally subject to regulation by specific international agreement. In other cases, difficulties could always be settled by negotiation between the interested parties. In any event, the objection was equally applicable to a six-mile limit in cases where the sea between the shores of the two States was less than twelve miles wide.

31. A twelve-mile limit allowed the coastal State effectively to protect the living resources of the sea off its shores, a particularly important consideration when its coasts were heavily populated and fish products formed a staple element of their diet.

32. It had been argued at the first Conference that endorsement of the twelve-mile limit would lead States to claim even greater breadths, and consequently cause friction and conflict. That allegation was quite unfounded, and, again, a similar objection could be levelled against a six-mile limit. It was perfectly obvious that agreement on a maximum limit would put an end to future claims for a broader territorial sea.

33. There was equally little substance in the objection that a twelve-mile limit would involve coastal States in heavier control expenditure. Though that might be true for some countries it was not so for all, and in any event the scale and nature of its control operations was a matter for each Government.

34. Such were the principle objections that had been raised to one of the most important proposals before the Conference: that submitted by the Soviet Union delegation (A/CONF.19/C.1/L.1).

35. Analysing the case for a six-mile territorial sea plus a six-mile fishing zone, and leaving aside the question of safeguarding so-called historic fishing rights, he said that, like the proposal for a twelve-mile limit, it recognized the exclusive economic interests of the coastal State within a twelve-mile belt. The main difference between the two lay in the fact that the former would allow the coastal State to exclude foreign fishing vessels from its fishing zone but not to protest against the presence of warships therein, which might constitute a serious threat to the coastal State's security.

36. The proposal for a six-mile limit had been submitted in the guise of a concession, whereas in reality it conferred certain advantages on States already possessing powerful navies and capable of exploiting the existing situation for their own ends. It was perfectly clear that such States would be in a far better position to launch offensive operations against a coastal State with a six-mile than with a twelve-mile territorial sea. In other words, the advocates of a six-mile territorial sea plus a six-mile fishing zone were first and foremost inspired by military, not by economic, considerations.

37. It would appear that defence was the main consideration; those countries which attached special importance to their security therefore had good reason to prefer a twelve-mile limit for the territorial sea. The Bulgarian delegation considered that the Soviet Union proposal provided the best solution for both problems before the Conference, and that it would meet the specific needs of different countries by providing various alternatives. Furthermore, it did not seek to impose any decision on a State that might redound to its disadvantage, but, within the framework of international law, left a free choice to each, consistent with the interests of the international community as a whole. The proposal had as

[9] Alfred Verdross, *Völkerrecht* (Vienna, Springer-Verlag, 1959), p. 215.

its objective the reinforcement of peace and international co-operation.

38. It was common knowledge that the efforts of The Hague Codification Conference of 1930 to establish a uniform three-mile limit for all States in the face of divergent legislation and practice had failed: the failure had been primarily due to the impossibility of fixing a uniform breadth for the territorial sea without injuring the vital interests of many States. That fact had again been confirmed at the first United Nations Conference on the Law of the Sea. Accordingly, the Bulgarian delegation was disposed to favour a realistic solution which, so far as possible, accorded with the interests of all States rather than an attempt to establish a uniform limit. He was certain that success would follow if all delegations were prepared to co-operate.

The meeting rose at 12.15 p.m.

FIFTH MEETING

Friday, 25 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. Drew (Canada), Mr. Tolentino (Philippines), Mr. García de Llera (Spain) and Mr. Geamanu (Romania)

1. Mr. DREW (Canada) said that the present Conference was faced with a great challenge, because for the first time in history a comprehensive codification of the law of the sea was in sight. Perhaps it was not fully appreciated how much progress had been made and what substantial results achieved at the first United Nations Conference on the Law of the Sea, which had been one of the most fruitful international gatherings ever held, as was proved by the scope and importance of the instruments it had adopted. Established law had been defined and codified there and new law written: an outstanding example of conciliation in the interests of the progressive development of international law.

2. The issues arising from the two questions before the second Conference had been clearly defined; but they were complex and of the utmost importance. He was certain that the differences of opinion surrounding them could be reconciled if the spirit of co-operation prevailed.

3. There were only two definite suggestions before the Conference about the delimitation of the territorial sea: one whereby any coastal State might fix the limit at any distance not exceeding six miles from the applicable baseline, the other whereby it might fix the limit at any distance between three and twelve miles.

4. With regard to fishing zones, there now appeared to be overwhelming agreement that every coastal State should have a right to establish such a zone contiguous to its territorial sea and up to a maximum distance from the baseline of not more than twelve nautical miles. The proposal for such a zone had first been put forward by the Canadian delegation at the 1958 Conference [1] to meet the needs of States that wished to have a measure of control over fishing off their coasts without being driven to adopt a twelve-mile territorial sea, an extension which his delegation still regarded as contrary to the fundamental principle of the freedom of the seas.

5. It was most satisfactory that that new legal concept of a distinct fishing zone — not provided for in the International Law Commission's draft article on the subject — should have found general acceptance, and that it should figure among all the proposals so far submitted to the present Conference. The concept offered an effective alternative to the action taken by those States which had adopted a twelve-mile territorial sea solely for the purpose of exercising greater control over fishing. With the rapid growth of world population and rising food requirements, the conservation and protection of the living resources of the sea were daily increasing in importance. Large trawlers fitted with modern refrigerating equipment could now operate far from their home ports and remain at sea for long periods — a development that called for new measures to protect the interests of those fishermen who depended for their livelihood on what they could catch off their own coasts. He hoped that all delegations, whether representing countries which relied in large measure on distant fishing countries whose waters were fished by boats from other nations or landlocked countries, would carefully examine the relevant estimates of the true extent of adjustment that the adoption of a twelve-mile exclusive fishing zone would necessitate. He mentioned that point because there had been a tendency to exaggerate the readjustment that would be necessary if steps were taken to protect the livelihood of fishermen living on coasts adjacent to waters fished by other nationals.

6. Introducing his delegation's proposal (A/CONF.19/C.1/L.4), he said that it offered a simple formula designed to meet the general desire for a wider fishing zone over which the coastal State would have full control. Though it might not altogether satisfy States whose nationals engaged intensively in distant fishing, there was considerable evidence to support the contention that such a formula was the only effective alternative to extension of the territorial sea for purposes of fisheries protection.

7. Up to a point, the Canadian proposal was identical with that of the United States of America (A/CONF.19/C.1/L.3); but there was an important difference between them in that the latter sought to establish what had been described as "historic" fishing rights. Though in some respects those rights would not be as extensive as originally contemplated in the United States proposal of 1958,[2] the underlying idea was the same. A provision

[1] *Official Records of the United Nations Conference on the Law of the Sea*, vol. III, annexes, document A/CONF.13/C.1/L.77/Rev.3.

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