Second United Nations Conference on the Law of the Sea

Geneva, Switzerland
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Sixth Meeting of the Committee of the Whole

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

had made every provision for the need to avoid obstructing international maritime communications and the exercise of rights deriving from the principle of the freedom of the high seas. Any legal formula intended to reflect the facts of international life would have to sanction the present position that States had in general decided on a breadth of up to twelve miles for the territorial sea.

37. The arguments advanced by the Canadian, Spanish and United States delegations, that to fix the breadth of the territorial sea at twelve miles would be incompatible with the freedom of the high seas and would furthermore be out of date in an age of nuclear armaments, were not defensible. There was no threat to the freedom of navigation in the application of the twelve-mile limit, since merchant ships enjoyed the right of innocent passage through territorial waters; on the other hand the situation with regard to the passage of warships was governed by the security of the coastal State. In that connexion Mr. Geamanu quoted a statement made on 20 January 1960 before the United States Senate Foreign Relations Committee by the head of the United States delegation to the present Conference, endorsing the following words of an American admiral:

> "Naval forces are more important in the missile age than ever before. Mobility is a primary capability of navies. Support of our free world allies depends upon the ability of the Navy to move, unhampered, to wherever it is needed to support American foreign policy."

It was obviously in the interest of the maintenance and reinforcement of peace and international security that naval forces should not be able to approach too close to the coast in order to bring pressure to bear on other countries.

38. Conscious as it was of the important contribution that the Conference could make to the improvement of international relations, the Romanian delegation was resolved to take part in its work in a spirit of constructive co-operation.

Organization of work

39. Mr. MATINE-DAFTARY (Iran), speaking on a point of order, urged that the general debate be concluded as quickly as possible. The time of the Conference was limited, and the Committee should turn as soon as possible to detailed consideration of the questions referred to it.

40. The PRESIDENT shared the view of the Iranian representative that, if the general debate continued in a somewhat abstract vein, there would be a real danger that the Committee would find itself left with too little time for dealing with its basic task of concluding an agreement on the recommendation or recommendations to be made to the Conference in plenary.

41. He proposed therefore that, in making their statements in the general debate, the representatives should also deal as specifically as possible with the proposals before the Committee.

The Chairman's proposal was adopted unanimously.

The meeting rose at 1 p.m.

SIXTH MEETING

Tuesday, 29 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. Carmona (Venezuela), Mr. Hare (United Kingdom), U Mya Sein (Burma), Mr. Riphagen (Netherlands), Mr. Emiliani (Colombia) and Mr. Vlachos (Greece)

1. Mr. CARMONA (Venezuela) said that the great strides taken in a comparatively short period towards the codification of the law of the sea showed that the topic was ripe for consolidation in a new and solidly based code of maritime law in keeping with modern needs. Although the principle of respect for the freedom of the high seas and for international navigation, which was in the minds of all, should not be forgotten, the advancement of many countries, the newly achieved independence of a number of States and a broader understanding of the rights and interests of each group of the human community necessitated solutions other than those which States had been advocating until the recent past. The first United Nations Conference on the Law of the Sea, after wrestling with dogmas and political attitudes for almost three months, had succeeded in drafting four Conventions which, except for two questions, covered the entire subject of maritime law.

2. The Venezuelan Government had tried to put those Conventions into effect as soon as possible. The Convention on the Continental Shelf and the Convention on the High Seas had been approved, with the reservations entered at the time of signature, by the Chamber of Deputies and were at an advanced stage of consideration in the Senate. The Chamber of Deputies had approved the Convention on the Territorial Sea and the Contiguous Zone and the Convention on Fishing and Conservation of the Living Resources of the High Seas, which were now before the Senate, and the Senate was awaiting the results of the second Conference before concluding its consideration of those two Conventions. Hence, the destiny of the Conventions depended on the success of the Conference. The statement made at the 1st plenary meeting by the United Nations Legal Counsel showed that several other States were in a similar position.

3. The two questions remaining to be settled were the breadth of the territorial sea and contiguous zone and the fishery limits. The Venezuelan Act on the Territorial Sea, the Continental Shelf, and the Protection of Fishing and Air-space fixed the breadth of Venezuela's territorial sea at twelve nautical miles measured from baselines specified in the Act. In that belt, the State exercised sovereignty over the waters, the land, the subsoil and the resources within it and the superjacent air-space. In cases where the effect of the delimitation would be

to impinge on foreign territorial waters, any dispute was to be settled by agreements or other means recognized in internatinal law. In addition, the Act provided for a contiguous zone of three nautical miles for purposes of supervision to safeguard the security and other national interests of the State. In that zone there existed no sovereignty nor exclusive fishing rights, and the air-space was not included in it. The Act had been carefully prepared by technical commissions in the light of the views of the International Law Commission and of modern science. No difficulties of any kind had yet arisen in its practical application. Neither the Venezuelan National Congress nor the Executive had the slightest intention of changing that principle, since they regarded it as equitable and satisfactory, and since Venezuelan practice was the same as that of many States which professed advanced ideas with regard to the territorial sea.

4. The concept of a three-mile limit was arbitrary and obsolete. It had been conceived in ancient times by the great maritime Powers to allow them full freedom of action on the high seas, even in the vicinity of foreign coasts. Some countries were trying to work out a formula which would salve at least something of the ancient concept, either by extending the territorial sea to six miles, with a contiguous zone of another six miles with exclusive fishery rights, as in the Canadian proposal (A/CONF.19/C.1/L.4), or the similar, but more restricted, formula recognizing historic rights proposed by the United States (A/CONF.19/C.1/L.3). The United States representative had stated that the United States still preferred the three-mile limit and was prepared to accept the compromise formula only because the twelve-mile limit had been so widely adopted; and Canada had passed an Act [1] in 1952 establishing a breadth of twelve miles for customs and fishing, so that it was making no real concession in its proposal.

5. The voting at the first Conference showed that an absolute majority of the participants supported the principle of a territorial sea twelve miles in breadth.The United States proposal [2] had then failed to gain a two-thirds majority; the vote had been 45 in favour and 33 against, with 7 abstentions, whereas the proposal for the twelve-mile limit [3] had received 39 votes in favour and 38 against, with 8 abstentions. The Canadian proposal, which fixed the breadth of the territorial sea at six miles with a contiguous fishing zone of a further six miles,[4] had been overwhelmingly defeated. It was evident, therefore, that the so-called compromise proposal in no way satisfied the majority of States and that a large number of States were not prepared to accept compromises in a matter which they regarded as vital. In his opinion, the twelve-mile limit would inevitably prevail.

6. The objections to the twelve-mile rule were unconvincing. It had been argued that if a flexible formula of three to twelve miles were adopted, all States would in practice opt for the latter figure. In fact, many States did not wish to extend their territorial sea for practical reasons. They would be free to apply or not to apply the rule as they wished. The prevailing uncertainty of the law, and the absence of any fixed rule in customary law, caused much confusion. It was equally untrue that an extension of the territorial sea would be detrimental to the freedom of navigation and to the freedom of the high seas. The adoption of a general rule would in fact facilitate the practical application of the freedom of navigation, and, in addition, the 1958 Conventions guaranteed innocent passage through the territorial sea save in very exceptional cases. The Convention on International Civil Aviation of 1944 safeguarded the right of passage for aircraft other than craft of airlines with regular flights, which were subject to bilateral air conventions or to the condition that permission must be obtained for commercial operations. The rule applied equally to the air-space over land and over the territorial sea.

7. It had also been argued that the extension of the breadth of the territorial sea to twelve miles might endanger national security or common defence in emergencies or in wartime. But surely, if, unfortunately, a third world war should break out, there would be no place for neutrals. In any case, the Conference was concerned with the law of the sea in time of peace only, as the International Law Commission had expressly stated.[5] Considering that States should be free to extend the breadth of their territorial sea to twelve miles, the Venezuelan delegation would support any moderate and equitable proposal to that effect.

8. The other question to be settled concerned one of the most important interests of the State — the question of fisheries. The provisions on fishing and conservation of the living resources of the high seas adopted at the first Conference were of the utmost importance, but many countries believed that the matter had not been entirely settled and wished for broader provisions for the protection of coastal States and of the living resources of the sea far from the coasts. The Venezuelan Government was watching with great interest the studies at present being carried out on that subject and hoped that definite conclusions or proposals would be submitted. His delegation would support any proposal that safeguarded the rights of the coastal State without impairing the freedom of the high seas and the right to exploit their resources.

9. Mr. HARE (United Kingdom) said that the fact that various unilateral claims had been made regarding the breadth of the territorial sea and fishery limits showed the need for the adoption of a definite rule of law on those matters, a rule of law which would be respected by all States. It was because the United Kingdom wished to reach agreement upon such a rule that it had supported the final United States proposal at the first United Nations Conference on the Law of the Sea, in spite of the heavy sacrifices that would have been involved for it. The United Kingdom had been then, and was still, seeking a solution which would satisfy the needs of both coastal States and fishing States.

[1] *Laws and Regulations on the Régime of the Territorial Sea* (United Nations publication, Sales No.: 1957.V.2), p. 95.

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

[3] *Ibid.*, document A/CONF.13/L.34.

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

[5] *Official Records of the General Assembly, Eleventh Session, Supplement No. 9*, para. 32.

10. The achievements of the 1958 Conference had been very considerable, but no agreement had been reached on two questions — the breadth of the territorial sea and fishery limits. The United Kingdom Government had, therefore, continued to regard the three-mile limit as the only breadth recognized under international law. It could not accept, in the absence of international agreement, that unilateral claims to wider limits had any general validity. In view of certain remarks that had been made, for instance in paragraph 1 (*b*) of the commentary on the Mexican proposal (A/CONF.19/C.1/L.2), he emphasized that the United Kingdom did not share the view that the International Law Commission had recognized that any breadth of the territorial sea not exceeding twelve miles was valid in international law. The representative of the United States had arrived at exactly the same conclusion in his clear and convincing statement at the 4th meeting of the Committee of the Whole. The proposal to hold the second Conference would have been meaningless if international law had already recognized the validity of claims not exceeding twelve miles. The suggestion that the Commission intended to imply that that was the position was a complete misinterpretation of its attitude.

11. The United Kingdom Government had sought to understand the reasons for claims advanced by some other States for wider territorial seas and fishing limits. Some, unmindful of the needs of merchant shipping, professed fears on security grounds. Others were concerned for their food supply or their livelihood from the fisheries close to their coasts.

12. Some States seemed to feel that their national security would be increased if they had wider territorial waters. Naturally, the United Kingdom Government understood their concern, but it was surely based on a misconception. A wide belt of waters around their shores was not, in fact, a suit of armour that would isolate those States from danger. On the contrary, in modern warfare a wide territorial sea gave no added protection from attack, and it was difficult and costly to police and control. It became hard to fix precisely the position of ships at sea. That could only increase the likelihood of incidents and so jeopardize the safety of coastal States.

13. So far as the interests of merchant shipping were concerned, he said there should be two essential aims. First, to reach agreement on a uniform breadth of territorial sea; and second, in determining that breadth, to make sure that it was broad enough to satisfy those who could not bring themselves to accept a three-mile limit, but yet not so broad as seriously to increase the risk of interference with the merchant shipping of the world.

14. It had been said that the proposals of the USSR (A/CONF.19/C.1/L.1) and Mexico (A/CONF.19/C.1/L.2), which would entitle each State to fix the breadth of its territorial sea at any distance up to twelve nautical miles, would be fair to all and harmful to none. That was not so. It was hardly a defence to say that countries would not necessarily claim the maximum; what really mattered was that they could, if they wished, claim as much as twelve miles, and such a discretionary power was bound to cause confusion.

15. The life of a seaman, although fortunately less hard than it used to be, was still a dangerous one. Many customary shipping routes ran along coasts or around headlands, with the object not merely of saving distance or making navigation easier, but of taking advantage of shelter. Seamen must not be exposed to greater danger by being pushed further away from places of shelter and from effective navigational aids. It was argued that those difficulties would not arise because the right of innocent passage had already been recognized. Experience showed, however, that there was a temptation to interfere with merchant shipping and, notwithstanding the right of innocent passage, reasons for interference were not always difficult to find. To avoid such risks, ships might find it necessary to make costly, lengthy and possibly dangerous detours. Such elements of uncertainty and risk, which could flow from an extension of the territorial sea to twelve miles, could not be ignored. Shipping was an expensive business, even under favourable conditions. Nor were the interests of the leading seafaring nations alone involved. Many nations were for the first time establishing their own merchant fleets and others would do so in the future. It would be unwise to make things more difficult for them. Could it not be agreed that the well-being and future development of all countries were dependent on the unfettered movement of world shipping? At a time when efforts were being made to remove artificial trade barriers, to lower tariffs, and to increase the flow of trade, surely it was undesirable to narrow freedom of movement on the high seas.

16. Some countries advanced the requirements of fishery conservation as a reason for claiming wider fishery limits; but that was not a sound argument. One of the achievements of the 1958 Conference had been to resolve the conservation problem by means of the Convention on Fishing and Conservation of the Living Resources of the High Seas, which had been adopted by a two-thirds majority. The merits of that Convention had, rightly, been generally acclaimed. It provided the means by which the fishery resources of the world could be properly conserved, so that the best possible use might be made of them. Recognizing the special interest of the coastal State in conservation, it gave that State the initiative in conserving fishery resources, not only in the vicinity of its coasts, but on the adjacent high seas. Any measures which a coastal State prescribed must conform to the scientific principles of conservation, and must aim at enhancing the yield of the fisheries over the years. The fishermen of all countries were required to observe those measures. There was, therefore, one rule for all and discrimination against none; and with such a balanced, rational and sensible arrangement, considerations of conservation could hardly be put forward as a reason for the extension of fishery limits, since the coastal States themselves would be able to ensure that all conservation needs were met and that the fisheries off their shores were not harmed by others.

17. If, then, conservation was not at issue, what lay behind the arguments about the breadth of fishery limits ? Much of the argument was about the problem of sharing the available catch. That was, of course, a

matter of great economic importance and no doubt accounted for the view, held by some, that every country should be entitled to exclusive fishing rights in a twelve-mile belt, and that foreign fishermen should stay in their own home waters, or at any rate well out to sea. It should be remembered, however, that not simply a question of food, but also the livelihood of fishermen of many nations was involved. Delegations should consider, firstly, why some countries engaged in what might be termed distant-water fishing; secondly, if that fishing were stopped or curtailed, what would be the effect upon the world's fish food supply; and what would be the economic consequences for the fishery and the coastal States.

18. Some countries engaged in distant-water fishing largely because of their geography and natural circumstances. The size of the fish stocks in the various coastal waters was not proportionate to the size of the national populations, not because the fish stocks in some places had been exhausted, but because some parts of the seas were naturally richer in fish than others. In general, fish were most numerous and easiest to catch in the shallower waters nearer to the shore than they were out in the deep waters of the oceans. Some countries, therefore, had to go farther afield than others to catch the fish they needed. The North Sea had been a traditional fishing ground for centuries. More fish were being caught there than ever in the past, but even so not enough to satisfy the needs of the very large population of Europe, and so for a very long time past the fishermen had had to go to more distant parts of the North Atlantic. Distant-water fishing of that kind had nothing to do with imperialism and colonialism. It was a necessity imposed by the facts of geography. It was not only the older nations which were affected or behaved differently from the others; among the newer nations there were those whose fishermen followed their trade nearer to the coasts of other countries than of their own, and their number must not be under-estimated.

19. Obviously, distant-water fishing would be greatly diminished if a twelve-mile fishing limit become the universal rule. Much of that fishing took place within twelve miles because the fish were close to shore. It was often assumed that if a coastal State were to establish a twelve-mile fishery limit, it would automatically take the fish which the fishermen of other countries would no longer be able to catch. The coastal State could, of course, increase its catch if it had a developed fishing industry of its own, and in many cases that was happening, even though the fishermen of other countries continued to fish in its waters. There were, however, other States on whose shores fishing by other countries took place, with rich resources of fish near their coasts but only sparse populations. Indeed, there were even areas with fish near which there was no human population at all. In cases of that sort the fishing resources could not be fully used. The extension of coastal fishery jurisdiction over large additional areas of sea was bound, therefore, to reduce the world's total fish catch, unless provision was made for continued fishing by other countries in those areas. Without such a provision many countries would be deprived of an important part of their food supply and that, surely, could not be reasonable.

20. In general, therefore, the coastal States would not fully gain what the distant-water fishing States would lose, but the Conference should be under no illusion about the exceedingly severe loss to the fishing States. It was a mistake to suppose that the fishing States were all rich and large countries. Many of them were quite small and by no means wealthy. For many of them distant-water fishing provided staple food for their people which could not easily be replaced. The United Kingdom, for example, was not a poor country, yet it had a very large population on a small island and was the largest importer of food in the world. It had, however, been able to supply itself with most of the fish it needed, thanks largely to its distant-water fishermen, who brought home rather more than half the country's total catch of fish. The loss of that fish, or a great part of it, would be a cruel blow to the United Kingdom's economy and food supply; and the impact upon its fishing industry would be a disaster. The same was true of many other nations. Surely it was not right to argue that, merely because those nations were in a minority, the Conference should condone an injustice. That was in effect the argument employed in the statement of the Canadian delegation. It was no answer to say that no injustice would be created on the grounds that it would be easy for States to make bilateral or multilateral agreements. Under the proposals submitted by Canada (A/CONF.19/C.1/L.4), Mexico (A/CONF.19/C.1/L.2) and the Soviet Union (A/CONF.19/C.1/L.1), the coastal State would have an unqualified right under international law to exclusive fishery jurisdiction over a belt of sea twelve miles wide. Any continuance of distant-water fishing by other States within that belt would be entirely subject to the grace and favour of the coastal State.

21. In the United Kingdom, large numbers of fishermen earned their living by distant-water fishing. Their livelihood and that of their families and of the shore workers would suffer by any serious curtailment of distant-water fishing. Similarly, large population groups in many other countries would suffer. The hardship to individuals would be just the same whether they were citizens of great or of small States. It could not be just or right that fishing States should have to face economic consequences of that magnitude.

22. It should not be thought, however, that the United Kingdom was blind to the needs of the coastal States. It believed that justice should be done to the coastal States, and it was ready to accept a new rule concerning fishery limits which would give them and their fishing communities larger areas of what had always been regarded as the high seas. But although the United Kingdom was prepared to agree to a new rule more favourable to the coastal States, it would not be just if the distant-water fishermen of the world were then to be prevented from continuing to seek their livelihood where they had fished for so long. Yet three of the proposals before the Committee would have precisely that effect. By a stroke of the pen — overnight as it were — great numbers of people in different parts of the world would be thrown out of work; industries which, in some cases for centuries past, had been geared to distant-water fishing would be crippled; and large populations would suffer an immediate and drastic reduction in their total fish food supply.

23. The Canadian proposal did indeed provide for a moderate and uniform breadth of the territorial sea, but the proposal of the Soviet Union was as indefinite on the territorial sea as it was definite on the subject of fishery limits. The Mexican proposal had the same defect, and added another by making the extent of fishery limits equally indefinite and allowing them to be extended even beyond twelve miles, as a kind of reward for States which chose, be it noted, a narrow rather than a wide territorial sea.

24. The basic virtue of the United States proposal (A/CONF.19/C.1/L.3), by contrast with the Canadian formula, was that it aimed to reconcile in a fair way the interests of the coastal and the fishery States where those interests conflicted, and provided the means by which just and reasonable agreements could be made to apply the principles in article 3 of the proposal. The United Kingdom delegation would, therefore, support the United States proposal. No one should think that it did not involve a heavy sacrifice on the part of the United Kingdom. It meant abandoning the three-mile territorial sea; it meant accepting not only the exclusive right of the coastal State to fish up to six miles, but also giving the coastal State a further six miles of exclusive fishing, subject only to the proviso that the contiguous zone should be shared — to a limited extent — with other nations which had an acquired right to fish in those waters. In supporting the United States proposal, the United Kingdom and its fishing industry would be accepting a heavy blow. He hoped that, in keeping with the spirit of the Charter of the United Nations, all delegations would be prepared to make concessions for the sake of the common good.

25. U MYA SEIN (Burma) said that the Conference, which was to complete the unfinished work of the 1958 Conference, was concerned with the two specific questions only, though very difficult questions. The atmosphere in which the Conference was being held was more propitious than that which had prevailed in 1958. There were therefore grounds for hope that the desired agreement could be reached, provided that the Conference rose to the necessary heights of statesmanship.

26. Recapitulating the lessons of past conferences on the subject, he said that the failuere of The Hague Conference of 1930 had shown the uselessness of holding extreme unilateral attitudes on many-sided problems, since the spirit of give and take was an essential feature of negotiation. The 1958 Conference had succeeded in settling some subsidiary questions, but had failed to solve the problem of the breadth of the territorial sea. Nevertheless, a definite trend of opinion had been discernible at that Conference, to the effect that the breadth of the territorial sea should be greater than three miles. His delegation hoped that the area of agreement during the second Conference would increase, so that the law of the sea could be codified successfully in all its aspects.

27. The main problem before the Conference was how to reconcile the freedom of the high seas with the freedom of the territorial seas in a manner that was at once objective, realistic, equitable and lasting. A second problem was to establish a proper balance between past and present standards, in order to eliminate or at least reduce the possibility of future international conflict. Basing itself on the experience of the 1958 Conference, his delegation wished to sound a note of caution. Undue emphasis on past tradition was likely to do the Conference more harm than good. Past tradition and law should from time to time yield to the force of new facts and circumstances; tradition and law must be alive and progressive. The task of codification was, at the same time, the task of making progressive law.

28. In any debate on the breadth of the territorial sea, three factors should be borne in mind. First, the physical or geographical nature of coasts varied greatly; secondly, the political, economic, technical, biological and legal aspects of the question varied with the locality; and thirdly, as the International Law Commission had pointed out, international practice in delimiting the territorial sea was not uniform, and international law did not permit an extension of the territorial sea beyond twelve miles. In view of those considerations, his delegation would be prepared to support a provision fixing twelve miles as the maximum breadth of the territorial sea, in the interests of the widest possible agreement. From the procedural point of view, it seemed preferable to examine the question of fishing limits before that of the breadth of the territorial sea.

29. Mr. RIPHAGEN (Netherlands) said that the main task of the Conference was to end the chaotic situation which had prevailed ever since several coastal States had extended their territorial sea beyond the traditional three miles, and had claimed preferential or exclusive fishing rights beyond their territorial sea. Accordingly, in trying to lay down rules for the maximum breadth of the territorial sea and for States' fishing rights, the Conference could not content itself with fishing an arbitrary number of miles which might be adopted by a two-thirds majority; it was essential to consider the interests of the international community and those of individual States, and to decide upon the legal title on which sovereign rights of States could be based.

30. The choice lay between rules governing the principles of territorial sovereignty and those embodying the freedom of the seas. The breadth of the territorial sea could obviously not be fixed unilaterally by a State, since a national proclamation of sovereign rights beyond the traditional limits constituted an encroachment of the freedom of the seas, as the International Court of Justice had stated in its judgement on the Anglo-Norwegian Fisheries Case.[6] The transfer of sea areas from the régime of the high seas to that of national sovereignty could be justified only by compelling reasons.

31. The reasons given for modifying the breadth of the territorial sea could be divided into general arguments, valid for all coastal States, and special reasons, depending upon particular needs of specific coastal States. Both should be weighed against the interests of the international community as a whole and against the interests of other States. It was sometimes argued that the breadth of the territorial sea should be extended to protect the

[6] *I.C.J. Reports 1951*, p. 116.

coastal State's security. That argument seemed weak, for distance had largely lost its protective value; moreover, it could not prevail against the overriding importance of freedom of navigation, which operated not only in the interest of States whose vessels sailed the seas, but also in the interest of all States whose economic life depended on seaborne trade. Furthermore, cases where the coastal States had to exercise limited jurisdiction beyond their territorial seas were fully covered by the provisions concerning rights of control in the contiguous zone in article 24 of the Convention on the Territorial Sea and the Contiguous Zone.

32. The issue concerning the exploitation of the living resources of the sea beyond territorial limits involved a contrast between the unlimited freedom of every State to fish on the high seas and the exclusive rights of the coastal State to fish in its territorial waters. The interests of the world community obviously required the largest possible area where every State could fish freely, and no conflict of interest arose where supplies of fish were sufficient. Restrictions on fishing to secure the optimum sustainable yield were provided for in the Convention on Fishing and Conservation of the Living Resources of the High Seas. Difficulties therefore arose only where there was not enough fish to allow for free and competitive exploitation by everyone. There was obviously no general basis for giving preference to one State or to another, and geographical proximity of fishing grounds could not justify such preference. Accordingly, any rule would have to be influenced by other considerations.

33. The situation, covered by resolution VI adopted by the first Conference,[7] of countries and regions whose people were dependent on fisheries but had the means to fish only near their own coasts, was not a normal one. There were many States whose population was largely dependent on fisheries and whose fishermen were obliged to fish near the coasts of other States, because no fish was to be found near their own coasts. Finally, there were many cases where no conflict existed between the needs of two States, as the existing resources sufficed for both. Accordingly, the exclusive rights of the coastal State to the living resources of the waters adjacent to its territorial sea could not be justified as a general rule, without reference to the needs and means of specific States and without exceptions in favour of the traditional fishing of other States. Furthermore, the general establishment of fishery zones would often result in insufficient exploitation, both for the purpose of satisfying the world's growing demand for food and for that of securing the optimum sustainable yield. The Conventions adopted at the first Conference reflected the dominant position of the coastal State, by recognizing the baseline system and, in respect of the continental shelf, reserving at least some fisheries for the coastal State. The Convention on Fishing and Conservation of the Living Resources of the High Seas also recognized exclusive rights in respect of fisheries conducted by means of equipment embedded in the floor of the sea and gave a privileged position to the coastal State with regard to the establishment of limitations to prevent overexploitation. On the other hand, the interests of States traditionally fishing beyond their coastal waters were not given any special protection under those Conventions.

34. Despite those facts, some countries wished to extend the rights of the coastal State still further. The USSR, Mexican and Canadian proposals all provided for exclusive fishing zones, and did not even try to strike a balance between the interests involved. Indeed, they failed to take into account the circumstances of any particular situation. The USSR and Mexican proposals had the added disadvantage of permitting an extension of the territorial sea up to twelve miles; such a provision would be open to serious objections from the point of view of international navigation. Furthermore, the Mexican proposal was clearly not inspired by motives of security, for a State could hardly be expected to trade its security interests for a larger fishing zone.

35. The United States proposal at least had the merit of recognizing in principle the equal value of the interests of States with traditional fishing rights and those of States geographically nearer the area in question, and of providing for the obligation to negotiate and for arbitration in the event of the failure of the negotiations. While his delegation still considered that the traditional limits of the territorial sea should stand, and that insufficient reasons had been advanced for any encroachment on the principle of the freedom of the seas, it was aware of the paramount importance of reaching a solution which would end the prevailing chaos of national claims and counter-claims in respect of maritime frontiers. It would therefore do its utmost to contribute to a solution acceptable to a two-thirds majority of the Conference, provided that such a solution did not depart unduly from justice and reason in particular circumstances. As yet, only the United States proposal seemed to fulfil those conditions, and his delegation would vote for that proposal, in spite of the ensuing disadvantages to the fishing interests of the Netherlands.

36. Mr. EMILIANI (Colombia) said that the questions under discussion were so complex and controversial that they could only be settled if every delegation adopted a conciliatory attitude. It would augur ill for the future of peace if the States composing the world community could not show sufficient ripeness of judgement to reach agreements in which the civilizing concepts of law prevailed over the irrational instincts of brute force. The great guiding principles of law must be respected and special interests must yield to them. Colombia had advocated the rule of the twelve-mile limit for the territorial sea, which was in fact part of Colombian law. His Government did not wish, however, to adopt an uncompromising attitude. Since a compromise was necessary, his delegation thought the Canadian proposal (A/CONF.19/C.1/L.4) offered the best basis for a possible compromise. Any mathematical formula was, of course, somewhat arbitrary. But that was one of the prices to be paid for precision, clarity and generality. Since it would be impossible to satisfy all conflicting views, a formula must be found which would cause least damage.

37. There was no longer any dispute about the fact that the sovereignty and defence of States required an extension of the breadth of the territorial sea beyond the traditional three-mile limit. It was equally obvious,

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

however, that that extension should not go so far as to infringe the freedom of navigation. Colombia, sacrificing its own interests, considered that a breadth of six miles might be regarded as satisfying both considerations. Any broader zone would entail heavy expenditures for patrolling and administration, which would be ruinous in times of conflict. The countries in the process of development should pay particular heed to that consideration.

38. To adopt the six-mile limit did not, however, imply that a further six-mile fishing zone contiguous to the territorial sea would not be helpful to those coastal States which derived considerable profit from fishing. Such a provision, too, would go far towards reconciling opposing interests, since a narrower zone would not furnish the equitable guarantees that were needed and a broader zone would hamper navigation and might seriously affect the fishing industries of non-coastal States.

39. If the coastal States restricted their interests by accepting such a formula, it would be wrong of the non-coastal States to urge historic rights. A claim to such rights would constitute an attempt to wrest more than equitable compensation out of a move towards compromise. Furthermore, it lacked a basis in law. In so far as the high seas were regarded as public domain, the ancient principle applied that rights could not be acquired in the public domain by prescription; and in so far as the high seas were regarded not as public domain but *res nullius*, such alleged rights would not only not be founded in law but would be incompatible with the nature of the high seas. In other words, what was the property of all could not become the preserve of a few.

40. In view of the foregoing considerations, Colombia would be prepared to support the Canadian formula, since it was the one most likely to obtain the required majority. Should it not do so, Colombia reserved the right to revert to its earlier point of view and to continue to apply its existing rules of municipal law.

41. Mr. VLACHOS (Greece) said that his country's position was the same as it had been at the time of the first Conference. His delegation was more convinced than ever that it would not be in the interests of the international community to adopt a solution which, though it might extend the national territory of each State, would increase the responsibilities of coastal States, constitute a permanent source of dispute, and check the expansion of world trade.

42. About 30 per cent of his country's territory consisted of islands, and it had a very long coastline — 14,000 miles. It might therefore be tempted to advocate an extension of the territorial sea to twelve miles, which would enable it to join all its islands by strips of territorial sea and so secure control of the Aegean Sea. General considerations, however, had strengthened its conviction that the six-mile limit was a golden rule which should apply both to the territorial sea and to the fishing zone, which should coincide with it.

43. It could be seen from the synoptical table (A/CONF. 19/4) that, of the seventy countries listed, only eighteen maintained a limit in excess of six miles and twenty-one a three-mile limit. The optimum, then, lay between those two extremes. Moreover, the six-mile limit was best adapted to geographical realities.

44. He pointed out that, whereas the Mexican delegation proposed a maximum breadth of twelve miles for the territorial sea, it apparently admitted that the six-mile limit was the most reasonable formula, since it was prepared to allow an eighteen-mile fishing zone for States which contented themselves with a territorial sea of six miles whilst States opting for the twelve-mile limit would not have a wider fishing zone.

45. He drew attention to the work of international organization and regulation which had been proceeding for years in the economic, technical and social and juridical fields. The United Nations organs, such as the Economic Commission for Europe, were endeavouring to eliminate sources of friction and to facilitate the movement of passengers and goods. At a time when that spirit prevailed in international gatherings, it would be inconsistent to adopt rules which would restrict the freedom of movement at sea. Under articles 4 and 7 of the Convention on the Territorial Sea and the Contiguous Zone, concerning the method of measuring straight baselines, large areas of the high seas had become territorial waters. Though the increase of the territorial sea to twelve miles might seem insignificant in relation to the immensity of the part which would remain free, the full importance of the increase could be appreciated if the situation were considered in the light of the shortest sea routes. For that reason his delegation considered that it would be in the interest neither of large industrial countries, exporters of manufactured goods, nor of countries which were exporters of raw materials to adopt rules which might hamper the freedom of navigation.

46. With regard to the fishing zone, his delegation believed that the coastal State should have exclusive fishing rights in coastal waters up to a limit coinciding with that of the territorial sea. However, in view of the difficulties involved, and in keeping with a spirit of international co-operation, it considered that the United States proposal offered a solution which reconciled the interests of the coastal States and those of fishing States. That position, far from being arbitrary, was based on a general consideration and an economic consideration. In the first place, if preferential fishing rights were granted to coastal States in waters which would remain open sea, it would be necessary to take into account the pre-existing practice and rights which, having been exercised lawfully and continuously, could not be ignored. Secondly, if fishing rights were granted exclusively to coastal States in a belt extending beyond their territorial waters, the whole existing fishing system would be upset, and the consequential economic repercussions on large numbers of people in whose diet cheap fish played an important role would be most serious. There might be special cases where a country's economy depended almost entirely upon fishing. His delegation was prepared to give favourable consideration to any suggestion that would create an exception to confirm the rule.

The meeting rose at 12.45 p.m.