Second United Nations Conference on the Law of the Sea

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Eighth 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)*

EIGHTH MEETING

Wednesday, 30 March 1960, at 10.45 a.m.

Chairman: Mr. José A. CORREA (Ecuador)

In the absence of the Chairman, Mr. Sörensen (Denmark), Vice-Chairman, took the Chair.

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. Amado (Brazil), Mr. Gasiorowski (Poland) and Mr. Bartos (Yugoslavia)

1. Mr. AMADO (Brazil) said that, although Brazil had no special interest in the breadth of the territorial sea or fishery limits, its delegation would co-operate in a constructive spirit in the quest for a solution to the problems before the Conference. The progress made since the Conference for the Codification of International Law, held at The Hague in 1930, gave much ground for optimism. The United Nations Conference on the Law of the Sea, in expressly recognizing the rights enjoyed by the coastal State in the contiguous zone, had gone much further than the coastal States could have hoped. He referred to paragraph 8 of the International Law Commission's commentary on article 68 of its draft articles concerning the law of the sea.[1] Ever since the International Technical Conference on the Conservation of the Living Resources of the Sea, held at Rome in 1955, jurists had recognized the right and power of the coastal State to intervene in any activity occurring off-shore in the high seas. The coastal State had the right, under the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas, to guard its nationals against the loss of certain species of fish, and it had the power to take unilateral action on the high seas. It had a special interest in a part of the high seas by virtue solely of its geographical position. It had a recognized right to participate in conservation arrangements and, if such arrangements could not be agreed upon with other States, to enforce its own conservation measures.

2. International maritime law had advanced so far and so fast that it had probably rendered obsolete the claims made earlier by certain States concerning their powers in the high seas beyond territorial waters or concerning the extension of territorial waters to enormous breadths.

3. So far as the breadth of the territorial sea was concerned, all that could be said was that there was no uniform rule. That was precisely the conclusion of the International Law Commission, which had added that international law did not justify an extension of the territorial sea beyond twelve miles.[2] It had never stated, however, that the breadth could extend from three to twelve miles. There was considerable confusion on that point. Of course States could extend the territorial sea if they wished, but the Commission had not formulated any rule to that effect. What it had said was that some States recognized three miles, others four, others six, others twelve. The Commission had simply recorded facts.

4. There was nothing to prevent any State from fixing the outer limit of its territorial sea at twelve miles. However, it might be doubted whether that was really necessary. An excessive breadth of territorial sea might well involve strategic, financial and political disadvantages, owing both to the excessive defence expenditure needed and to the increased possibility of incidents and disputes. Brazil itself would find considerable drawbacks in a twelve-mile limit. The Brazilian delegation was not offering any solution; it was merely raising the question, in the hope that some delegations might reconsider their position and so open the way to general agreement.

5. The question of fishery limits was, however, the heart of the matter. In the past, all problems relating to fishing had been settled by regional agreements, either bilateral or multilateral, concerning specified maritime zones. Local factors, the most important being geographical position, gave each maritime region its own peculiarities, and the differences were accentuated by the different level of industrialization in the countries concerned.

6. The Conference was trying to frame general rules concerning matters which had always been dealt with by regional instruments. For the first time in history an attempt was being made to solve the problem of fishing by means of an international conference. The real point was not, as it had been in the past, to fix the breadth of the territorial sea for the purposes of sovereignty. What was really at stake was fishing, the exploitation of the living resources of the sea. It was an economic matter, which was not connected with the territorial sea in the traditional nineteenth-century sense.

7. Above all, there must not be any restriction of the principle of the freedom of the high seas. Accordingly, recognition of an exclusive fishing zone would serve the purpose of safeguarding the economic interests sought by certain States when they argued their need to extend the breadth of their territorial waters. The conditions of modern life, the interdependence of States and modern technical advances had created an intermediate zone, in which coastal States were given certain special rights, including fishing rights.

8. There too it must be noted that practice was not uniform, and that the Conference's task was to find, in international law, general solutions applicable to situations which were mainly regional in nature and which had for that very reason been traditionally regulated by bilateral or multilateral agreements.

9. It should not be forgotten that great economic interests were at stake. Highly developed States had huge fishing fleets owned by great companies, equipped with all the resources of the most modern technique, which scoured the seas, following the migration of species and over-fishing to such an extent that they were imperilling the survival of whole stocks of fish. On the other hand,

[1] *Official Records of the General Assembly, Eleventh Session, Supplement No. 9*, pp. 42-43.

[2] *Ibid.*, pp. 12-13.

States which had not yet been able to equip themselves to rival the highly developed States suffered greatly from such over-fishing. Obviously it was too simple to complain about progress made by others. The huge fishing fleets represented huge investments and they harvested food for large populations. On the other hand, it would hardly be fair to disregard situations such as that of Peru and other South American countries on the Pacific coast and such as that of Iceland. The problem was how to reconcile such divergent interests and how to devise rules of international law applicable to such diverse situations. The difficulty was not that countries had not wished to solve the problem, but that they had so far been unable to do so.

10. The main difficulty was that no two seas were alike; the North Sea was very different from the Pacific Ocean. One mile in the North Sea might contain more resources than 200 miles in other seas. Hence, to reduce the problem to a single universal formula was not easy and never had been. That was the reason why fishing had always been the subject of regional bilateral or multilateral agreements. The problem was not, however, insoluble, for nearly all contemporary problems had become international owing to the speed of modern travel. After the success of the first Conference the courage to take a further step forward would suffice. That step might be expected, particularly from States which already held in common the concept of a twelve-mile limit for the breadth of the territorial sea and the fishery limits combined. They undoubtedly constituted an important proportion of the membership of the Conference.

11. If almost all countries accepted twelve miles for fishery limits, the main question on which the Conference was divided was the concept of twelve miles for absolute state sovereignty. Although certain countries continued to press for a territorial sea of twelve miles, it was doubtful whether they really meant to enforce their claim. If a country assumed the privilege of taking twelve miles for its territorial sea, it must have the political and other means to enforce its right. Geography was likely to be the deciding factor — as it almost always was. If the Soviet Union, for example, was situated on the North Sea instead of on the Baltic, perhaps its territorial sea would not be twelve miles broad. On the other hand, if the United Kingdom were on the Baltic, the breadth of its territorial waters would probably be twelve miles.

12. The first duty of the State was to safeguard its people's interests. In the North Sea interest would prompt a country to try to develop fishing. It could easily be appreciated that the loss of three miles of the North Sea would be a heavy blow to the United Kingdom or to France. The conciliatory gesture of the United Kingdom and France in accepting six miles was the more commendable. The special situations mentioned by the Viet-Nam and Philippine delegations could not be disregarded, and showed even more clearly how hard it would be to reach a uniform solution.

13. A development towards a general formula would require at least a minimum of agreement on what were called historic rights, designed to safeguard the legitimate interests of countries which had been fishing since time immemorial sea areas within the fishery limits which would be recognized as exclusively reserved to the coastal States. There too, however, it was not impossible that the parties concerned might reach some common ground if they were really convinced that to defer the solution of those problems could only aggravate the difficulties and, in the long run, harm everyone. Brazil itself suffered from none of those difficulties, but wished to show that it was well aware of the legitimate interests at stake.

14. Mr. GASIOROWSKI (Poland) said that the entire law of the sea ultimately hinged on the delimitation of the territorial sea. Accordingly, it was no exaggeration to say that the implementation of the Conventions adopted by the 1958 Conference depended to a large extent on the success of the present Conference in defining the breadth of the territorial sea. It was not surprising, therefore, that, although two years had elapsed since the four Conventions in question had been drawn up, the prospects for their implementation were not encouraging. As the representative of the Secretary-General had said in his opening speech at the 1st plenary meeting, only two States had so far ratified the Convention on the Territorial Sea and the Contiguous Zone and only one State the Convention on the High Seas and the Convention on Fishing and Conservation of the Living Resources of the High Seas. Since, under one of the final clauses of the Conventions, entry into force was dependent on ratification by twenty-two States, it was very doubtful whether in the present circumstances the Conventions would come into force. If the present Conference failed, it would, it seemed, not only make it impossible to codify the law of the sea, but would prejudice the codification of international law in general.

15. It was therefore essential that everything possible should be done to make the Conference a success. If the Conference was able to overcome the difficulties in its way, a very favourable atmosphere would be created for the coming international conversations, whose importance in the interests of peaceful co-operation among nations could not be too strongly emphasized.

16. The attitude of the delegation of Poland was determined by the rules of international law and by the realities of international life. In addition to the three-mile rule for the breadth of the territorial sea there were the " Scandinavian " four-mile rule, the " Mediterranean " six-mile rule and a twelve-mile rule, not to mention the more special cases in which the limit was fixed at five, nine or ten miles. All those limits came within the range of three to twelve miles. Those examples undoubtedly reflected existing practice, and since it was a well-established principle that the practice of States was the basis of international law, the logical conclusion was that international law recognized the right of States to fix the breadth of their territorial sea between the limits of three and twelve miles. It was evident that such a norm of international law did exist. It did not impose on States the obligation to apply a uniform rule, whether of three, six or twelve miles, but only recognized their right to make a choice between the given limits.

17. That conclusion was so logical that it was not easy to evade it, and sometimes it was implied even by those who did not wish to recognize it. It was for that reason that the International Law Commission, although reluctant to admit the existence or non-existence of a rule of international law on that question, had nonetheless

stated that international law did not permit an extension of the territorial sea beyond twelve miles. It therefore followed that international law permitted an extension of the territorial sea up to twelve miles. Recognizing the absence of a uniform rule concerning the delimitation of the territorial sea, the Commission had recommended that the breadth of the territorial sea should be fixed by an international conference. In his opinion, the task of the present Conference was simply to formulate the principle, which already existed as a rule of customary law, that the State had the right to fix freely the breadth of the territorial sea up to a limit of twelve miles.

18. That view was indeed implied indirectly in the Convention on the Territorial Sea and the Contiguous Zone which was adopted in 1958. Mr. Gasiorowski referred to article 7 concerning bays, and recalled that in the debate on the question of determining the maximum length of the closing line across the mouth of a bay so that its waters could be considered as internal waters, the First Committee and later the Conference in plenary session had adopted a proposal which the Polish delegation and two other delegations had sponsored.[3] The proposal fixed the length at twenty-four miles, and that distance was actually laid down in paragraph 4 of article 7. The implication was obvious, because the distance in question had been calculated as twice the breadth of the territorial sea. That provision had been commented on by Sir Gerald Fitzmaurice in an article [4] which stated that the distance of twice twelve miles might imply, for some persons, the recognition of the twelve-mile rule for the delimitation of the territorial sea.

19. The twelve-mile rule was often compared with the three-mile or six-mile rules to show that it was exaggerated. But the fact that there was a general tendency for a coastal State to increase the extent of the contiguous waters over which it exercised rights was ignored. The question of the territorial sea was only one special aspect of that tendency. In the course of the last ten years several States had extended their territorial sea. There were even States which had proclaimed their sovereignty over the sea up to a distance of 200 miles or more. Special cases were also made out for encroaching on the high seas, such as the existence of a continental plateau or the conservation of living resources. In the light of that general tendency the twelve-mile rule seemed very modest and, if it were clearly laid down, it would curb excessive extensions of the territorial sea. The rule in question therefore met all the requirements of a compromise rule, which in fact it was.

20. The foregoing considerations were in favour of the proposal submitted by the Soviet Union (A/CONF.19/C.1/L.1). That proposal, in fact, was in harmony with existing international law as well as with the realities of international life: while it took into consideration the current tendency to extend the territorial sea, it ignored extremes. The proposal in question was clear, represented a compromise and was based on the principle of the equality of States; it granted no privilege to any one at the expense of others. By contrast, the United States proposal (A/CONF.19/C.1/L.3) relied on so-called " historic rights " for the purpose of granting to certain States alone the right to fish in a zone contiguous to the territorial sea of other States. Such a concept was open to the most serious objection. It had no basis in law and sought to discriminate against a very large majority of States, and especially against the new, underdeveloped States which were not as yet equipped to fish in distant waters. It was incompatible with the efforts being made under the auspices of the United Nations to promote the economic development of the underdeveloped countries. The delegation of Poland fully supported the criticism of the proposal expressed by the leader of the Canadian delegation at the 5th meeting.

21. It had been argued that the twelve-mile rule would cause practical and technical difficulties if ships had to navigate at a distance of more than twelve miles from the coast, and if aircraft could not use the superjacent air-space. He did not think, however, that those technical difficulties were insurmontable. In any event, the case had been badly put. There was no reason whatever for ships to abandon their former routes and navigate outside the territorial sea; the right of innocent passage was universally recognized. He referred to the Convention on the Territorial Sea and the Contiguous Zone which clearly stated in article 14 of the principle that " ships of all States, whether coastal or not, shall enjoy the right of innocent passage through the territorial sea ". Where straits were concerned, the Convention stipulated in article 16, paragraph 4, that there should be no suspension of the innocent passage of foreign ships through straits which were not only the means of communication between two parts of the high seas but also between a part of the high seas and the territorial sea of a foreign State.

22. So far as air navigation was concerned, he referred to article 5 of the 1944 Convention on International Civil Aviation. The right to fly over the territory of a State necessarily implied the right to fly over its territorial sea. In regard to scheduled air services, he cited article 1 of the International Air Services Transit Agreement, signed at Chicago in 1944, which likewise implied the right to fly over the territorial sea.

23. In conclusion, Mr. Gasiorowski said that the arguments against the twelve-mile rule were not valid and could not outweigh the arguments in its favour.

24. Mr. BARTOS (Yugoslavia) said it would be tragic if the Conference closed without working out a universally recognized rule codifying the international law respecting the breadth of the territorial sea and the contiguous fishing zone. Such a failure would in effect condone the right of each State to fix its own limits and would encourage States which had in the past been restrained by certain scruples to avail themselves of that right.

25. As yet, there was no codified rule concerning the breadth of the territorial sea and the contiguous fishing zone. That the alleged limit of three nautical miles was an abstraction was evident from the practice of many States and from their desire to evolve a different rule. In so far as general acceptance was the foundation of any rule of international law, it was clear from the synoptical table prepared by the Secretariat (A/

[3] *Official Records of the United Nations Conference on the Law of the Sea*, vol. III, 47th meeting, para. 9.

[4] " Some Results of the Geneva Conference on the Law of the Sea ", *The International and Comparative Law Quarterly*, vol. 8, part 1, January 1959, p. 73.

CONF.19/4) that the three-mile rule had no real existence. Nor did that alleged rule have the antiquity which its defenders claimed. In support of his argument, he cited a note sent by the State Department of the United States in 1793 to the British and French Legations at Washington, concerning the breadth of the territorial sea for purposes of neutrality in time of war.[5] That note recognized explicitly that, at the time, certain positive rules had been applied by certain States, fixing different breadths for their territorial seas, and that the United States had recognized those differences. Since then, Mexico, Portugal and Russia had extended their territorial seas to nine, six and twelve miles, respectively. Accordingly, the problem of diversity of rules was not a new one. Secondly, the note expressly recognized the right of the coastal State to determine the breadth of its territorial sea, for any purpose, including that of protecting its neutrality in times of war, and merely thought it desirable that the States affected should be notified of the decisions taken. It would be hard to find in the note any grounds of principle for the United States concept of a three-mile limit. Indeed, the note had reserved the ultimate extent of the territorial sea for future deliberation, and in 1848 an agreement concluded between the United States and Mexico had recognized a territorial sea of nine miles for the latter country.

26. With regard to official opinion on the subject in the United Kingdom, he drew attention to Lord Salisbury's statement, during a debate in the House of Lords in 1895 on the meaning of the three-mile limit established in 1878, that great care had been taken not to name three miles as the territorial limit: the limit depended on the distance to which a cannon-shot could go.[6] The range of a cannon-shot at that time had been approximately twelve miles.

27. Those two opinions could not be regarded as statements of an absolute rule of law, for individual States might lay down different boundaries within the limits of cannon range. Nor could such an alleged rule be held to be binding on any State, least of all on the newly independent States. Most of the latter countries were in favour of broader limits, and it would be wrong to deny them a right which was vested in all sovereign States.

28. His delegation endorsed the conclusions reached by the International Law Commission that international practice concerning the delimitation of the territorial sea was not uniform, that international law did not permit an extension of the territorial sea beyond twelve miles, and that the establishment by a State of a territorial sea between three and twelve miles did not constitute a violation of international law. It might be argued that his delegation's interpretation was based partly also on the commentary to the Commission's report; however, as the Commission's practice was to adopt by vote every passage in its report, including the commentary, it was clear that the majority of the Commission had concurred in that interpretation, which was both realistic and in conformity with existing international law.

29. He referred to the proposal submitted by the Yugoslav delegation to the first Conference,[7] under which the right of every coastal State to establish the breadth of its territorial sea between three and twelve miles by unilateral action would have been recognized. The proposal had been based on the principle of the sovereign equality of States and on their right to decide, in the light of political, economic and geographical conditions, whether and to what extent that power should be exercised. In his delegation's opinion, recent scientific developments in no way reduced the importance of the breadth of the territorial sea in the defence system of coastal States.

30. He did not agree that the breadth of the territorial sea endangered the freedom of navigation of ships flying foreign flags: such ships could not navigate more freely in the territorial waters of States with a three mile limit than in broader territorial waters. That was clearly shown by current legal practice with regard to the innocent passage of merchant ships through territorial waters and by the provisions of the Convention on the Territorial Sea and the Contiguous Zone adopted at the 1958 Conference. The rule of international law concerning innocent passage was fundamental, and would continue to be observed whether or not the 1958 Convention entered into force.

31. Nor had he been convinced by the argument that a broader territorial sea would impose heavy costs upon the coastal State. Such States were fully aware of their duty to ensure the safety of shipping in the territorial sea. In any case, in establishing the breadth of the territorial sea, the coastal State would inevitably take into account their political and economic needs, on the one hand, and their financial capacities, on the other.

32. With regard to the argument that an extension of the territorial sea would adversely affect the freedom of passage by civil aircraft, he referred to the Convention on International Civil Aviation which adequately guaranteed freedom of aerial navigation. Besides, the question did not arise in practice, since all States were either members of the International Civil Aviation Organization (ICAO) or had settled the question by means of bilateral agreements, over 1,300 of which had been registered with ICAO between 1944 and 1958.

33. One objection which might legitimately be raised related to the unnecessary presence in peacetime of warships and military aircraft near the coasts of foreign States. The presence of such vessels and aircraft should be reduced to a minimum, in order to protect the peoples of coastal States from fear of pressure and threat of armed force.

34. Those considerations had led the Yugoslav delegation to the conviction that the Conference could achieve success by proclaiming as a general rule of international law the right of each State to determine the breadth of its territorial sea between three and twelve miles. There was no doubt that if such a rule were laid down, many States would not take the maximum provided for, and would either maintain their existing limits or would establish them at less than twelve miles. The principle of the equality of States should also be maintained in

[5] See Christopher B. V. Meyer, *The Extent of Jurisdiction in Coastal Waters* (Leyden, A. W. Sijthoff, 1937), pp. 71-72.

[6] *Ibid.*, p. 133.

[7] *Official Records of the United Nations Conference on the Law of the Sea*, vol. III, annexes, document A/CONF.13/C.1/L.135.

the economic sphere, with regard to the exploitation of the living resources of the sea. Accordingly, the breadth of the zone of exclusive fishing rights should be established and the Conference should lay down a uniform maximum breadth for that zone, independently of the breadth established for the territorial sea. The deliberations of both Conferences had shown that it was essential to many States, especially to economically under-developed countries, that the fishing zone should be established within the limit of twelve miles from the baseline from which the territorial sea was measured.

35. So far as fisheries were concerned, the Conference should be equally realistic. The fishing fleets of the under-developed countries consisted of small vessels not equipped for distant-water fishing. By contrast, the fishing fleets of the industrialized countries were equipped for fishing on the high seas and had no need to enter the territorial waters of other States.

36. He was glad to note that all the proposals submitted to the Conference acknowledged the economic value for the coastal States of the exploitation of the living resources of the sea in a zone of twelve miles measured from the baseline of the territorial sea. Some of them, however, confused two concepts — that of the conservation of fishing resources and that of their exploitation. In that connexion, the United States proposal (A/CONF.19/C.1/L.3) deserved examination.

37. At the previous Conference, the United States delegation had supported the Canadian proposal concerning the exclusive fishing rights of nationals of the coastal State up to a distance of twelve nautical miles from the baseline of the territorial sea [8] and had subsequently submitted a proposal along the same lines.[9] Unfortunately, there had been later inserted a clause concerning the alleged fishing rights of vessels of foreign States which had made a practice of fishing in that zone. The United States delegation considered that the text submitted to the present Conference was an improvement on its earlier proposal in that it restricted the catch of the vessels in question by reference to the catch in a specified base period. Any increase in the resources would thus benefit the coastal State. Under those conditions, however, not only would the coastal State be the sole loser by any impoverishment of the stocks of fish, but it was doubtful whether the restriction could be enforced in practice, and control measures would be very costly for the coastal State.

38. There was no doubt that trawlers, which fished unceasingly, would fish from the time they left their port to the time they reached the zone with exclusive fishing rights, and again possibly in the territorial sea of the coastal State when they called at the coastal State's port for the inspection of their catch. In the opinion of the Yugoslav delegation, there would be no way to determine the kinds and quantities of fish which had been taken by the foreign fishers in their own national waters, in the high seas and in foreign seas, nor any way to separate such fish from those taken from the zone where the coastal State had exclusive fishing rights.

39. Further, by maintaining the fishing rights of other States in the zone of exclusive fishing rights of the coastal State, the United States proposal set up between that State and the fishing State a kind of condominium in the zone in question. It thereby diminished the rights of the coastal State recognized by the Convention on Fishing and Conservation of the Living Resources of the High Seas, which empowered the coastal State to order conservation measures and, in article 7, paragraph 3, required the fishing vessels of the foreign State to respect such measures pending the settlement of the dispute by arbitration.

40. The latest United States proposal would authorize foreign vessels to disregard the rules of the coastal State in such a case and to continue their fishing activity until the question was settled. Moreover, the body competent to decide the matter would be an international judicial organ, even though the zone in question was one in which the coastal State had the same sovereign right with regard to fishing as in its territorial sea. In other words, the fishing State would be exercising sovereign rights in waters under the control of another State, and its mere claims would have greater legal force than an order made by the coastal State. The Yugoslav delegation could not share the United States view, but, if the United States concept were adopted, it acknowledged that a fishing State might have the right to initiate legal action but not that it should have authority to continue its activities pending settlement of the dispute by arbitration.

41. The Yugoslav delegation, without distinguishing between the kind of fishing carried out since time immemorial and that practised during the five years preceding 1958, regarded the affirmation of so-called historic rights as an effort to uphold the theory of acquired rights. It was evident from the circumstances in which those rights had come into being that in most cases they represented vestiges of colonialism or an abuse of power by politically or economically stronger States. It would be contrary to the spirit of the Charter to deprive States of their national resources on the pretext that they had had to give them up when they had been unable to exploit them themselves. Some feared a decrease in the world production of fish for human consumption, but that was a field in which United Nations assistance to the under-developed countries could produce excellent results. Experience had shown that coastal States could in a short time and at moderate cost be rendered capable of fully exploiting their coastal waters.

42. He reviewed the arguments advanced at the 2nd meeting by the Cuban representative, who would grant preferential fishing rights to the coastal State and " historic " rights to other States. Admittedly, that representative accepted the possible exclusion of foreign fishermen if necessary for the conservation of biological resources. That could not be considered a concession to the coastal State, however, since it already had the right to exclude foreign fishermen from the high seas adjacent to its waters under article 7 of the Convention on Fishing and Conservation of the Living Resources of the High Seas. Moreover, the Cuban representative would grant foreign fishermen a preferential fishing right if those of the coastal State were not sufficiently active. The Yugoslav delegation opposed that argument, which would condemn the under-developed countries to permanent

[8] *Ibid.*, document A/CONF.13/C.1/L.77/Rev.1.

[9] *Ibid.*, document A/CONF.13/C.1/L.140.

economic inferiority, and which was inconsistent not only with the purposes of the Charter and with the sovereign equality of States but also with the policy of the United Nations to promote the political and economic advancement of the under-developed countries. The grant of " historic " rights to foreign fishermen and the reduction of exclusive fishing rights to perferential rights would be a permanent source of disputes between States. It would be preferable by far to encourage States to enter into bilateral or regional fishing agreements, negotiated voluntarily and on a footing of equality.

43. In view of the foregoing considerations, the Yugoslav delegation would vote against all the proposals which would deny to coastal States exclusive fishing rights within a radius of twelve miles measured from the baseline of the territorial sea. On the other hand, his delegation was ready to co-operate with other delegations in the search for an acceptable solution which would be both realistic and lasting.

The meeting rose at 1.10 p.m.

NINTH MEETING

Wednesday, 30 March 1960, at 3.20 p.m.

Chairman: Mr. José A. CORREA (Ecuador)

Consideration of the questions of the breadth of the territorial sea and fishery limits in accordance with resolution 1307 (XIII) adopted by the General Assembly on 10 December 1958 *(continued)*

GENERAL DEBATE *(continued)*

Statements by Mr. Nogueira (Portugal), Mr. Okumura (Japan) and Mr. Pfeiffer (Federal Republic of Germany)

1. Mr. NOGUEIRA (Portugal) said that although at the first United Nations Conference on the Law of the Sea, his delegation had voted for the United States proposal [1] as opening the door to a possible compromise, it had seen no legal reason for considering the three-mile rule as dead; no more did it see such reason at the present time. Much had been said about the shortcomings of that rule and its inadequacy under present-day conditions, but such gloomy prognostications had, perhaps, not been properly tested against the statistical evidence. In fact, the synoptical table in the Secretary-General's note on the breadth and juridical status of the territorial sea and adjacent zones (A/CONF.19/4) showed plainly that out of the seventy-one States listed therein no less than twenty-two expressly accepted the three-mile rule and that in addition there were other States, like his own, which adhered to that rule though there was no specific provision on the subject in their municipal legislation. To those who claimed that the three-mile rule was obsolescent and would shortly fall into complete oblivion, he would point out that it had been expressly confirmed within the last decade by five countries, and that three countries which had gained their independence after the Second World War had held to it. Moreover, generally speaking, the three-mile limit was still applied as a supplementary rule for the delimitation of the territorial sea where no specific legislation existed. A distinction had to be maintained between the principle itself and the concept on which it might originally have been based. Incontestably, the validity of the principle could no longer be defended by reference to the criterion of the range of a cannon, but the principle was viable because new circumstances gave it new life. If the community of nations as a whole was to derive the maximum benefit from the freedom of the high seas, the territorial sea must be kept as narrow as possible, which was why the Portuguese delegation was in favour of embodying the three-mile rule in the multilateral convention which it was the Conference's task to prepare.

2. The International Law Commission had been unable to define, or even propose, a legal rule for the delimitation of the territorial sea. In article 3, paragraph 1, of the draft rules adopted at its eighth session,[2] the Commission had made a statement of fact which in no way implied recognition of the existence of different rules of law of equal validity. In paragraph 3 of the same article, the Commission stated that it had not itself taken a decision as to the breadth of the territorial sea up to a limit of twelve miles, and in paragraph 4 that that breadth should be fixed by an international conference. Its view could be summarized as follows: that within the range of state practice fixing the territorial sea between three and twelve miles it could not propose a rule, and that limits beyond twelve miles were not admissible in international law. In other words, the Commission had gone no farther than an impartial reader of the synoptical table would go. That interpretation of the Commission's position had been confirmed by one of its members, the Brazilian representative, at the previous meeting.

3. The breadth of the territorial sea had been fixed unilaterally by some countries between a minimum limit of three and a maximum limit of twelve miles. He left aside claims to a wider belt, since they were regarded by the Commission as not conforming with international law. The synoptical table showed that four countries had adopted a four-mile limit; one country (newly independent) a five-mile limit; ten countries (including three newly independent) a six-mile limit; one country a nine-mile limit; one country a ten-mile limit and thirteen countries (including only two newly independent) a twelve-mile limit. Thus, of the seventy-one countries listed in the table, at least thirty-five had adopted a limit not exceeding six miles, whereas only fifteen had imposed a wider one.

4. None of the four proposals before the Committee (A/CONF.19/C.1/L.1 to L.4) prescribed a three-mile limit, though it would have been permissible for them to do so as they only sought to establish a maximum. Two of the proposals had been submitted by countries

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

[2] See *Official Records of the General Assembly, Eleventh Session, Supplement No. 9*, chap. II.