Second United Nations Conference on the Law of the Sea

Geneva, Switzerland
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Ninth 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)*

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.

countries adherents of the three-mile rule, doubtless with the commendable aim of making a constructive contribution to a universally acceptable solution.

5. With specific reference to those two proposals — those of the United States of America (A/CONF.19/C.1/L.3) and Canada (A/CONF.19/C.1/L.4) — he would himself prefer a uniform limit because that would fulfil three of the most important requisites of any rule of law, namely: that it should be definite, unequivocal and uniform. However, theoretical perfectionism must give way to what was practicable, and his delegation, being inclined to favour those proposals which came closest to safeguarding the concept of a narrow territorial sea, was prepared to support article 1 in either proposal, whereby the maximum breadth of the territorial sea would be fixed at six miles.

6. Turning to the problem of the fishing zone, he said that the Conference had there been entrusted with the complex task of creating a new rule of law. Such a rule must be equitable both in its general and in its specific application, and must take into account all legitimate interests which had become established and accepted within the existing legal framework.

7. Fishing in distant waters, some of which would come within the scope of the outer zone as defined both in the United States and Canadian proposals, was an important activity for his country. The legitimacy of such fishing had been fully recognized by international law, according to which the high seas were free and open to use by all nations. Such distant-water fishing had long been the practice of Portugal, among other countries, and was carried out in accordance with the relevant international rules and regulations, in good faith and without detriment to or encroachment upon the rights of any other State. Thousands of persons were engaged in such fishing, and a large fleet of suitable craft had been built up over the years. The catch represented one of the main sources of animal protein for the Portuguese people, and was entirely disposed of in the home market. To illustrate its importance, he said that during the period 1956-1958, out of 756,410 tons of yield from demersal fishing, 609,589 tons had been cod, one of his country's staple foods, caught in the north-western Atlantic Ocean. Part of that tonnage had come from waters that would fall within the fishing zone of coastal States if either the United States or the Canadian proposal were adopted. It should be added that foreign fishing craft operated in analogous waters off the Portuguese coasts.

8. Without going into the theory of the principle of *res communis*, prescriptive rights and the like, he was bound to emphasize that such practices as those he had described, constituting effective and continued usage wholly in conformity with international law, could not in justice be ignored if the concept of an outer fishing zone were to be embodied in a rule of international law. Otherwise, the outlook would be bleak indeed for the countries that engaged extensively in fishing: other work would have to be found for the fishermen, the people's feeding habits changed, craft dismantled or reconverted at great cost, all with considerable capital losses and the threat of unemployment. That did not mean of course that the special rights which coastal States might be entitled to exercise in their fishing zone should themselves be ignored. Those rights could and should be recognized alongside those of fishing States, as laid down in the United States proposal, subject of course to certain limitations that remained to be determined in the interests of all concerned.

9. There was no reason why the same kind of co-operation which had resulted in the conclusion at the 1958 Conference of the Convention on Fishing and Conservation of the Living Resources of the High Seas should not bring about agreement on a rule on the outer fishing zone. His delegation considered that the United States proposal alone approached the matter in a constructive, equitable and realistic way. Approval of that proposal would cause Portugal substantial economic loss, but his Government was none the less prepared to support it as a sensible compromise which he was confident the Conference would accept. There were no obstacles which could not be overcome given goodwill and reciprocal understanding. His delegation was prepared to make its contribution towards such a successful outcome within the framework of the concepts and principles he had outlined.

10. Mr. OKUMURA (Japan) emphasized that his delegation attached great importance to the present Conference as an opportunity, which might not soon recur, for the nations to find an equitable solution to the cardinal problems of the breadth of the territorial sea and fishery limits. The first United Nations Conference on the Law of the Sea had shown that the issue was highly controversial and could only be settled in a spirit of conciliation with the goodwill and co-operation of all those taking part. At that Conference the United Kingdom had submitted a compromise proposal [3] providing for a territorial sea six miles broad, on the understanding that if no agreement was possible on that compromise the three-mile practice would remain the recognized rule of international law. A number of other delegations, including that of Japan, had expressed their readiness to support such a proposal on the same understanding. It was therefore wrong to assert, as some representatives had done, that the three-mile rule had ceased to be a rule of international law. The Japanese Government adhered to the position it had taken at the first Conference, being convinced that a rule of international law could be changed only by means of an international agreement based on a consensus of opinion among the nations. Whatever position his delegation might take in the further discussion and voting, he could assure the Committee that it would be moved solely by a sincere desire to see an acceptable compromise agreed upon at the present Conference.

11. In his Government's view, any extension of the breadth of the territorial sea, or the creation of an exclusive fishing zone, would to that extent constitute an encroachment on the freedom of the seas, which it was the Conference's duty to uphold in the interests of all mankind. He regretted that some countries should be primarily interested in the immediate benefits to be derived from extension of their territorial waters or fishing zones, since it was more important to safeguard and promote the long-term benefits that would accrue

[3] *Official Records of the United Nations Conference on the Law of the Sea*, vol. III, annexes, document A/CONF.13/C.1/L.134.

from the free use by the international community as a whole of the widest possible area of the high seas. He refuted the argument, adduced by some delegations, that coastal States needed an extension of their territorial sea or an exclusive fishing zone for conservation purposes, on the ground that the special interests which the coastal States might claim were already adequately safeguarded by the provisions of the Convention on Fishing and Conservation of the Living Resources of the High Seas, adopted by the first Conference in 1958.

12. He was convinced that, if the present Conference failed to resolve or reduce the differences between States on the issues of the territorial sea and fishing rights, those differences would remain a major source of international friction and disputes. The Japanese delegation would therefore give serious and sympathetic consideration to any proposal based on justice and equity and put forward in a spirit of conciliation and concession. But proposals seeking to extend a coastal State's territorial sea, or the zone in which it would enjoy exclusive fishing rights, to twelve miles or beyond did not seem compatible with the principles of justice and equity if they excluded States which had for many years been fishing in the areas of the high seas affected, and whose economy and national livelihood largely depended on fishing in distant waters. Japan, the leading fishing country of the world with an annual catch of about five million tons, had a particular right to stress that point. Its people derived almost 70 per cent of their animal protein requirements from fish, the bulk of which was caught in distant waters. Moreover, his country's economy was heavily dependent on foreign trade and shipping. Thus any extension of the territorial sea or exclusive fishing zones would immediately and seriously affect Japan's economy and standards of living. Therefore, if his delegation supported any proposal which went beyond the traditional three-mile limit, it would be doing so in spite of the heavy sacrifice entailed. In such a case his country would be giving overriding consideration to the interests of mankind as a whole, and would act solely in a spirit of conciliation and concession, which he hoped would be reciprocated by other States.

13. He emphasized that the purpose of the present Conference was to establish an effective rule of law, which was essential to international peace and co-operation. The new convention must not be a mere paper agreement; it would have to be faithfully observed *in toto* and by all States. Such rights as it might confer on coastal or non-coastal States might not be set at nought or circumvented by unilateral action on any pretext whatsoever. The Conference could mark an important milestone in the history of the international community, and he appealed to all taking part in it to be unsparing in their efforts to accomplish the task set them.

14. Mr. PFEIFFER (Federal Republic of Germany) said that, his Government's attitude towards the breadth of the territorial sea and fishing limits not having changed since the first United Nations Conference on the Law of the Sea, he would merely outline the arguments adduced by the representative of the Federal Republic of Germany in the First Committee of the first Conference on 14 March and 10 April 1958.[4]

15. The Federal Republic of Germany had always upheld the principle of the freedom of the seas, and had consistently supported a breadth of three nautical miles for the territorial sea.

16. In his Government's view, the establishment of an exclusive fishing zone outside the territorial sea was an innovation which might well restrict the freedom of the seas, place the acquired rights of certain States, including the Federal Republic of Germany, in jeopardy, and entail long-term disadvantages for the international community as a whole and especially for those countries which were at present claiming an exclusive fishing zone. The argument had been put forward in favour of the establishment of such zones that both the *de jure* and the *de facto* situation had been modified by the creation of many States which were still inadequately equipped to engage in distant-water fishing, and which ought therefore to be allowed to benefit from a contiguous fishing zone in which they would be protected from all foreign competition. But it was legitimate to ask whether that argument did not overlook the temporary nature of the situation. Those new nations had both an inexhaustible demographic potential and vast natural resources. Their remarkable impetus was far from spent, and it was probable that they would soon catch up with — if indeed they did not outrun — other States which had hitherto had the advantage over them in the technical field. Rather than taking a stand on a purely temporary situation, therefore, it would be better to count on a future in which the rational exploitation of the common resources of mankind would be attended not only by equality of rights but also, and to a far greater extent than at present, by technological equality. The day was not far distant when the young States, having equipped themselves for distant-water fishing, might well find themselves baulked everywhere by the twelve-mile limit. Moreover, respect for the principles hitherto in force would in no wise prevent the Conference from taking account, as his delegation had already suggested, of the special interests of those countries whose economies were largely dependent upon fishing.

17. Such had been, and still was, the attitude of the Federal Republic of Germany. However, anxious as it was not spurn any initiative likely to promote universal agreement, his delegation was prepared to give careful consideration to any modification that might be suggested, to enable the Conference to come to a successful conclusion, provided always that any such modification did not prejudice his country's vital interests, and that any material sacrifice accepted was compensated by the moral satisfaction of having contributed to a general agreement.

18. With those considerations in mind, his delegation would support those proposals which were closest to the existing rules, would best safeguard the principle of the freedom of the seas and would take account of historical developments. Of all those so far submitted to the Conference, the United States proposal (A/CONF. 19/C.1/L.3) came closest to the ideas of the Government of the Federal Republic of Germany. It had the merit of recognizing the existence of certain acquired fishing rights — although it appreciably restricted them. In that connexion, the Committee should note the wide scope of the restrictions provided in the United States proposal, under which the coastal State, by improving

[4] *Ibid.*, vol. III, 15th and 55th meetings.

its equipment and methods, could increase the yield of its fisheries year by year. Conversely, fishing craft from distant countries, no matter how efficient their equipment, would in future be allowed to take from the zone in question only the quantities and species of fish that they had caught during the base period. That meant that the margin between the yield of national fisheries and that of foreign fishing vessels would be continually increasing to the benefit of the coastal State. The United States proposal, therefore, called for real sacrifices from those States which enjoyed acquired rights, and the resulting losses should not, as certain members of the Committee had attempted to do, be belittled. If, after some hesitation, the delegation of the Federal Republic of Germany had decided to support the United States proposal — despite its attendant drawbacks — it had done so solely as a contribution to the success of the second United Nations Conference on the Law of the Sea.

The meeting rose at 4.15 p.m.

TENTH MEETING

Thursday, 31 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. García Robles (Mexico), Mr. Sen (India) and Mr. Yasseen (Iraq)

1. Mr. GARCIA ROBLES (Mexico) said that the question of the breadth of the territorial sea had, of course, among other aspects, a legal aspect. For more than a century influential Powers had tried to build up groundless propositions into scientific truths. It was now generally recognized that the so-called three-mile rule was dead, a "fallen idol" as Gidel had described it at the Codification Conference at The Hague in 1930; the first United Nations Conference on the Law of the Sea had so far disregarded the rule that not a single delegation had dared to press to the vote any proposal embodying it.

2. The Mexican delegation believed that a breadth of six miles for the territorial sea was equally inadequate, a view shared by many delegations. At the 1958 Conference, only two proposals providing for a territorial sea of six miles without an additional fishing zone had been put to the vote, and they had been rejected by overwhelming majorities. The reason why States did not consider the six-mile limit reasonable lay not only in fairly recent enactments, but also in older instruments. For example, between 1848 and 1908 Mexico had concluded no fewer than thirteen bilateral treaties in which its territorial sea had been recognized as measuring three leagues or nine nautical miles (in seven treaties), or twenty kilometres (in six treaties). Five of those treaties were still in force, two with the United States of America and those with Guatemala, Ecuador and the Dominican Republic.[1]

3. Article V of the first Treaty between the United States of America and Mexico dated 2 February 1848 stipulated that "the boundary line between the two republics shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande", and similar terms were used in article I of the second Treaty with the United States (1853) and in article III of the Treaty with Guatemala (1882). The Treaties with Germany (1882), with the Kingdom of Sweden and Norway (1885) and Great Britain (1888) contained identical stipulation that "the two Contracting Parties agree to consider as the limit of maritime jurisdiction on their coasts the distance of three sea leagues, reckoned from low-water mark". The Treaties with France (1886), Ecuador (1888), the Dominican Republic (1890), El Salvador (1893), Holland (1897) and Honduras (1908) also included almost identical wording, by which the Contracting Parties agreed "to consider as limit of the territorial jurisdiction on their respective coasts" or "the limit of their jurisdiction in the territorial waters adjacent to their respective coast" the distance of twenty kilometres, reckoned from low-water mark. It was worth noting that all those treaties were considerably ahead of their time in referring to the territorial sea as it was understood in modern times, for all of them beyond doubt fully recognized the sovereignty of the coastal State over the territorial sea. From the evidence, it was clear that Mexico had a good historic title to a territorial sea of nine nautical miles — the limit laid down in legislation enacted in 1935 — and that no formula limiting the breadth of the territorial sea to six miles could be acceptable to the Mexican delegation.

4. The Mexican delegation was still convinced that the flexible proposal which it had co-sponsored at the 1958 Conference, recognizing the right of every State to fix the breadth of its territorial sea at a maximum of twelve nautical miles,[2] was most likely to achieve the Conference's aims, for it was the only one yet offered that accurately reflected reality, as embodied in the existing laws and regulations of coastal States, and consequently the only one holding out any prospect that a freely accepted agreement might be reached, either at the present Conference or at a later one. The formula satisfied the legitimate claims of the coastal States without detriment to interests which the maritime and fishing Powers might legitimately wish to protect on the grounds of law, justice and equity. The synoptical table prepared by the Secretariat (A/CONF.19/4) on a proposal

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[1] For extracts from those treaties see Alfonso García Robles, *La Conferencia de Ginebra y la anchura del mar territorial* (Mexico City, 1959). See also *Laws and Regulations on the Régime of the Territorial Sea* (United Nations publication, Sales No.: 1957.V.2), pp. 745-777, *passim*.

[2] *Official Records of the United Nations Conference on the Law of the Sea*, vol. III, annexes, document A/CONF.13/C.1/L.79.