Second United Nations Conference on the Law of the Sea

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Twelfth Plenary Meeting

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régime, they could not now depart from it, were in effect demanding that the majority submit to the veto of a minority. Such an attitude would ultimately destroy the principles on which the United Nations itself was founded, since peace and good will could become reality only if the spirit of give and take was also real and not merely a pious expression of hope.

42. The United Kingdom would vote against the ten-Power draft resolution (A/CONF.19/L.9), which sought to put off indefinitely a decision on the breadth of the territorial sea. All delegations were clearly aware of the issues, and it was the duty of the Conference to take its decisions forthwith.

43. The Icelandic amendment (A/CONF.19/L.13) to the second proposal adopted by the Committee on the Whole, by eliminating the ten-year period allowed to distant-water fishing States for the readjustment of their fishing industries, would undermine the very principle on which the proposal was based, since other States might well demand the same treatment. Had there really been an imminent shortage of fish in the seas around Iceland, such an amendment might have been justified, but scientists did not agree that the cod catch had reached its limit, and considered that it could still be safely increased, given proper regard for conservation. All the countries which fished off Iceland, including the United Kingdom and Iceland itself, were members of the International Union for the Conservation of Nature and Natural Resources, which could institute any conservation measures that proved necessary.

44. His Government recognized that both Iceland and the Faroe Islands presented special problems, and he was glad to inform the Conference that, as a result of talks between the Danish representative and himself, the Danish and United Kingdom Governments were satisfied that they could reach a sensible and fair agreement whereby the ten-year rule would be adjusted to meet the special situation of the Faroes. He had also approached the representative of Iceland with a proposal for limiting the ten-year rule in Iceland's favour. His efforts had, however, been unsuccessful, and his Government was prepared to refer the problem to some mutually agreed impartial authority for adjudication. If the Icelandic delegation would accept that offer and agree to abide by the award, his own Government would undertake to do the same. If the joint proposal was adopted and Iceland accepted his offer, that country would have an exclusive twelve-mile fishing zone after a period of probably less than ten years, and would also enjoy the protection of the Convention on Fishing and Conservation of the Living Resources of the High Seas. It would also be able to establish claims for preferential fishing rights beyond twelve miles, if the amendments of Brazil, Cuba and Uruguay (A/CONF.19/L.12) were adopted. The idea of reaching a settlement by the decision of an impartial authority was very much in line with those amendments, which his delegation would support, although its acceptance would mean that his own country and many others would have to face the possibility of losing still more sea areas traditionally fished by their peoples. The amendments proposed to deal in a sensible and practical way with the problem of special situations within the framework of an international rule of law; an internationally constituted and recognized body would assemble and assess the relevant facts and arbitrate between the interests of coastal and fishing States.

45. His delegation would also support the draft resolution submitted by Ethiopia, Ghana and Liberia (A/CONF.19/L.8) on technical assistance, which it regarded as imaginative and constructive.

46. The United Kingdom had supported the proposal submitted jointly by Canada and the United States in the Committee of the Whole, despite the loss its provisions would entail for his country's fishing industry, and would support the new joint proposal (A/CONF.19/L.11) for the reasons it had given in committee. The vote in committee had clearly shown that the proposal was the only one likely to succeed, and it had since then attracted further support.

47. The issue at stake was whether there would be a law of the sea which all nations could agree to observe in future, or whether chaos was to be allowed to persist, and he therefore appealed to any delegation whose mind was not yet made up to consider the grave consequences of the second alternative. Failure to reach agreement would do grievous harm to the United Nations and to all the principles on which it had been founded.

Expression of sympathy for victims of the earthquake in Iran

48. The PRESIDENT expressed to the Iranian Government and people and to the inhabitants of the stricken town of Lar the sympathy and condolences of the Conference, all members of which had been profoundly shocked by the news of the earthquake which had just devastated that place.

49. Mr. MATINE-DAFTARY (Iran) warmly thanked the President for his expression of sympathy in the disaster which had plunged Iran into grief and anxiety.

The meeting rose at 7.50 p.m.

TWELFTH PLENARY MEETING

Monday, 25 April 1960, at 9.15 p.m.

President: Prince WAN WAITHAYAKON (Thailand)

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 (A/CONF.19/L.4, L.5/Rev.1, L.6, L.8, L.9, L.11 to L.13) *(continued)*

[Agenda item 9]

1. Mr. DEAN (United States of America) said that he wished to express the appreciation of the Canadian and United States delegations for the support given to their joint proposal (A/CONF.19/C.1/L.10) in the Committee of the Whole. He realized, of course, that a number of countries had found difficulty in voting for a compromise

proposal which had not contained all the provisions they would have wished the Conference to adopt. Since the adoption of that proposal many delegations which had abstained and many which had voted against it had advised the United States delegation that they were now in favour of the new joint Canadian and United States proposal (A/CONF.19/L.11). That had confirmed his belief that the basic features of the proposal with respect to the territorial sea and fishery limits were those which were alone capable of adoption by the Conference as a general rule of law.

2. The joint Canadian and United States proposal adopted by the Committee of the Whole and the new proposal submitted to the plenary meeting were basically alike in that each would provide for a maximum six-mile territorial sea; they would accord to the coastal State exclusive jurisdiction over fishing in a contiguous zone extending twelve miles from the baseline, so that for most coastal States that exclusive twelve-mile fishing jurisdiction would be immediate and would be a net gain of nine miles; and, in other cases, where vessels of foreign States had made a practice of fishing in the outer six miles of such zone in a five-year base period from 1953 to 1958, both proposals allowed such vessels to continue to fish in the outer six-mile zone for a period of ten years.

3. The relatively brief ten-year period was intended to give fishing States time to make the inevitable economic and human adjustments necessitated by the loss of fishing grounds, in many cases used for countless generations. At the end of the ten-year period, the coastal State would have exclusive fishery jurisdiction, unless it entered into bilateral or multilateral agreements making other arrangements.

4. The new proposal embodied, however, certain changes of detail. They were changes in a compromise proposal and had been negotiated in such a way that all the various features must be kept as part of a single package.

5. The revisions incorporated in the new proposal, which should likewise be accepted as a whole, were the precise definition of the term " nautical mile "; the clarification of the nature of the contiguous fishing zone as part of the high seas beyond the six-mile territorial sea, consistent with the definition of the term in article 1 of the 1958 Convention on the High Seas; the specific reference to articles 9 and 11 of the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas; and the restriction of the disputes to be settled by the procedure set forth in paragraph 4 to those arising out of paragraph 3. In addition, a new paragraph had been added, making clear the relationship of existing or future bilateral or multilateral agreements to the proposal.

6. He emphasized that the sponsors intended that, although the coastal State would possess " jurisdiction " over fisheries in the outer six-mile zone, the coastal State would not be at liberty in the interim ten-year period to act in any way that diminished or rendered ineffective the fishing rights continued by paragraph 3 of the proposal by regulation, or to attempt to make such foreign fishing in the outer six-mile zone comply with domestic regulations incompatible with the fishing rights granted during that period. It should also be clear that the effect of the proposal was to except the juridical status of historic waters.

7. A problem of concern to a number of delegations was that there were or might be special situations in which a coastal State should enjoy preferential fishing rights extending beyond the area twelve miles from shore. Several proposals to that effect had been submitted to the Conference. If such preferential rights were to be generally acceptable, however, they would have to be defined in such a way that the definition would meet the legitimate needs of certain coastal States and would not lend themselves to arbitrary or purely unilateral acts by the coastal State. Any failure to define them in that way might lead to manifold disputes. The United States delegation had acknowledged that exceptional situations of overwhelming dependence on coastal fisheries existed, and that those situations should receive sympathetic and careful consideration. They might require an exception from the general formula applicable to the territorial sea and fishing limits.

8. The constructive amendments submitted by Brazil, Cuba and Uruguay (A/CONF.19/L.12) were therefore to be welcomed. They would strengthen the joint Canadian and United States proposal, and he would urge all delegations to support them.

9. The Icelandic proposal (A/CONF.19/L.4, annex, first proposal) and the Peruvian draft resolution (A/CONF.19/L.5/Rev.1) were less comprehensive; the United States delegation would therefore oppose them, as it must oppose the Icelandic amendment (A/CONF. 19/L.13) to paragraph 3 of the joint proposal. It had been very clear throughout the Conference that the most difficult task would be to find a general rule which could cover the wide variety of individual fishing interests. Fully to satisfy each individual case would make agreement impossible. The joint Canadian and United States proposal, with the joint amendments, went as far as any general rule could to meet the admittedly difficult problems of States such as Iceland. Any further relief for Iceland might best come from bilateral or multilateral arrangements between the States concerned, and it was gratifying to learn that negotiations between Iceland and the United Kingdom were apparently progressing. Such a solution was now specifically referred to in paragraph 5 of the Canadian and United States joint proposal.

10. The United States delegation heartily supported the draft resolution by Ethiopia, Ghana and Liberia (A/CONF.19/L.8). Those delegations were to be commended for drawing attention in a constructive and helpful manner to the need for technical assistance. Many of the existing differences among countries on the questions of fishery limits were the reflection of differences in their ability to exploit the living resources of the sea. It was gratifying to find that many other delegations had contributed to that well-conceived and well-drafted proposal.

11. As he had stated in the Committee of the Whole, the United States would prefer that a three-mile territorial sea, without a contiguous fishing zone, should continue as international law, since it would be to the best interests of all nations, by preserving the greatest possible freedom of the high seas. In recent years,

however, the questions of the breadth of the territorial sea and fishery limits had become the subject of controversy and dispute, much of which was irrelevant to the Conference's discussions. Progressively and in a co-operative spirit, labouring to reach a sound and workable agreement, the great majority of Governments had, however, re-examined the nature of the final proposal they were prepared to accept. The United States Government was now proposing or supporting international agreement on the issues before the Conference on a basis far removed from its own preference for a three-mile territorial sea and very far removed indeed from its own economic interests. If that effort were a move in the so-called " cold war ", it was difficult to see why the United States delegation had ever put forward such a proposal.

12. The United States delegation had made concessions where possible each step of the way to achieve a greater and wider measure of agreement, but unfortunately some other delegations had made no concessions and had continued to adhere to proposals which would permit the unilateral extension of the territorial sea. Some countries had unilaterally fixed the limits of their territorial sea and had stated that they would pay no attention even if a two-thirds majority of the Conference declared that such action was wrong.

13. The original eighteen-Power proposal (A/CONF.19/C.1/L.2/Rev.1) had now been brought forward again as a ten-Power draft resolution (A/CONF.19/L.9). Although presented in the form of a draft resolution, it was in fact a proposal which dealt with the very substance of the problem, but avoided the most important question, that of the breadth of the territorial sea, by merely stating that " there still exists wide disagreement on the question ".

14. Under operative paragraph 3 of the ten-Power draft resolution the Conference would recognize that a State was entitled to exercise certain rights, thereby *ipso facto* recognizing a twelve-mile exclusive fishing zone. The sponsors described that action as a progressive development of international law, a statement surely not in accordance with the facts. Under operative paragraph 2 certain States which had become independent before 24 October 1945 would be requested to refrain from extending their present territorial seas. Whatever their present breadth of territorial sea might be, however, the draft resolution would not by its terms alter it. At the same time, it would confer on other States which had gained their freedom since the United Nations Charter had come into effect complete freedom to fix the limits of their territorial sea at twelve miles, or, for that matter, so far as the text of that curiously worded draft resolution was concerned, at any distance beyond twelve miles.

15. Although the Conference's purpose was to reach agreement on a unified rule of law with respect to the territorial sea, the proposal asked it to deny the very purpose for which it had been called and to adjourn in admitted failure even before attempting to reach agreement. Though called conciliatory, that was a conference-wrecking proposal. It did not express the prevailing spirit of the Conference which aimed at reaching a successful conclusion by adopting a true compromise proposal, fair to both the coastal and the fishing States—namely, the joint Canadian and United States proposal. The ten-Power draft resolution was grossly discriminatory. Some twenty-three nations had become independent since 24 October 1945. Each was now a welcome member of the community of nations, but it was more than doubtful that they would seek or wish to be treated differently from others. A proposal assuming that agreement on the territorial sea and fishery limits could not be reached at the Conference was contrary to the plain evidence. It did not recognize the fact of the widespread feeling that agreement could and would be reached on the basis of the joint Canadian and United States proposal. The Conference would, in his opinion, reach agreement, and the great majority of delegations would continue to be motivated by that spirit of compromise, fair play and conciliation which had prevailed so far. The vote would, he believed, be a landmark in the history of international law and in the settlement of international differences through a process of patient, constructive and peaceful compromise. It would constitute a real answer to those who claimed that United Nations procedures were too cumbersome, and that some other solution must be sought.

16. On various occasions speakers had referred to treaties to which the United States was a Party, and had placed interpretations on them at variance with the official United States position and with the facts. Other statements had been made with respect to matters not before the Conference which had been contrary to official United States views. The United States delegation had not considered it necessary or desirable from the standpoint of orderly debate to enter into a discussion of extraneous matters. It merely wished to say that its silence was not to be construed in any way as acquiescence in any views stated at the Conference which were inconsistent with the official position of the United States Government and already made known, in most instances, to the Governments concerned through the diplomatic channel.

17. The joint proposal was sponsored by the Canadian and United States delegations, but many other delegations were entitled to share the credit. He wished particularly to express the United States delegation's sincere appreciation of the efforts of all those delegations whose work had led to a positive and constructive outcome of the Conference's work.

18. Mr. GARCIA AMADOR (Cuba) explained that he had not withdrawn the original Cuban draft resolution (A/CONF.19/L.6) and would not consider doing so until the result of the vote on the amendments submitted by Brazil, Cuba and Uruguay (A/CONF.19/L.12) to the second proposal of the Committee of the Whole was known. It should also be noted that the amendments related to the proposal as approved in Committee, not to the new proposal by Canada and the United States (A/CONF.19/L.11).

19. Mr. SEN (India) said that he was fully conscious of the gravity of the situation and that the Conference had reached a crucial stage, and he realized the difficulties that the Indian delegation's stand might create. He had listened with the utmost interest to the statement of the United States representative, and sincerely wished that it might be possible for the Indian delegation to respond

to his passionate plea. It would certainly be desirable to support the only general proposal reported by the Committee of the Whole to the plenary meeting; but that was impossible. He was deeply sorry that, despite the Indian delegation's efforts, no reconciliation had been achieved between the advocates of the twelve-mile territorial sea and the supporters of the six-mile plus six-mile formula.

20. The twelve-mile limit was the vital factor. Its proponents did not wish to enlarge the territorial sea for its own sake, but because they still had every reason to harbour the apprehensions which had been repeatedly expressed during the Conference. All delegations were aware that the difficulties in the way of the freedom of navigation could easily be disposed of by conceding the right of innocent passage, so far as merchant ships and aircraft were concerned, even if the territorial sea extended to twelve miles. The difficulty arose only when the right of innocent passage for warships was involved. The small countries feared encroachments by foreign warships coming into their adjacent waters and remaining there for long periods. That was why they were anxious to exercise in a twelve-mile zone the right to control foreign warships when necessary, which they could do, in the present state of international law, only within their own territorial sea. Coastal States could not be expected to make concessions where their security was involved, and non-coastal States had nothing to lose and everything to gain by recognizing the genuine apprehensions harboured by the coastal States.

21. If the right to control the movement of warships had been conceded, it might have been possible to accept the joint Canadian and United States proposal. India would have been willing to abandon certain rights in the twelve-mile territorial sea and achieve a compromise, while leaving the coastal States full territorial rights in a twelve-mile zone which left the outer six-mile zone completely free for navigation by foreign merchant ships and airlines. The Indian delegation had, however, refrained from making a formal proposal to that effect, as it would only have raised fresh controversies.

22. The Indian delegation appreciated the efforts at compromise made by the maritime Powers, which had been actuated sincerely by the desire to reach a decision. Unfortunately, there had been no prospect of such a decision being unanimous. It was to be hoped that continuing efforts would be made to find a solution, and that the good sense of all States would eventually lead to an agreement, without which the creation of international law was impossible. International law could be created only by free assent, never by numerical majorities.

23. Mr. TUNKIN (Union of Soviet Socialist Republics) said the time had come to weigh up the situation. The results of the vote in the Committee of the Whole had shown that thirty-six delegations were in favour of establishing a twelve-mile territorial sea and fishing zone. Although thirty-six votes did not represent a majority, that state of affairs was highly significant from the historical point of view. At the time of the Codification Conference at The Hague in 1930 no one would have believed that thirty years later such a large percentage of participants would express a preference for a twelve-mile limit. The Canadian and United States proposal in the Committee had received 43 votes, a majority of the delegations voting, but not a majority of the participants in the Conference. Moreover, if allowance were made for the countries which were unfortunately not represented — through no fault of their own — it became obvious that there was even less support for the six-mile limit than the vote suggested. It had been said at the time of the vote in the Committee that the positions then taken by States was merely preliminary. In his delegation's opinion, however, the results obtained in the Committee could not be regarded as fortuitous. Two years had elapsed since the 1958 Conference, during which period certain States which wanted the second Conference to be held as soon as possible had made every effort, through the diplomatic channel and special missions, to influence other States in favour of their proposals. Despite all those efforts, however, the proposal had gained less than one-half of all the possible votes in the Committee. The pressure had since been intensified, and all available means were being used to secure the two-thirds majority.

24. His delegation had been most unfavourably impressed by the situation which was revealed in the Iranian representative's statement at the 10th plenary meeting. The announcement that Iran, which had established a twelve-mile territorial sea, would abstain from voting was evidence of the distortion of the free will of a sovereign State. The tactics that had been employed to bring about such results were based on the all too familiar notion that in international relations power and only power should be relied upon and used to force other States to accept certain conditions. Rules of international law must be created by agreement between States, arrived at through the free expression of opinion by the participants. The method of relying on power was obsolete; the days when a certain group of States could presume to dictate international law to others had passed, and any such attempts were doomed to failure, in addition to aggravating the international situation. Some representatives had urged the minority to heed the decision of the majority; but it had been proved in the Committee of the Whole that thirty-six States were in favour of a twelve-mile limit. If the People's Republic of China, which had established a twelve-mile limit, were also taken into account, the population of the countries in favour of that limit would amount to 1,700 million, or over 60 per cent of the world's population. Even leaving that argument aside, the main point was that problems of international relations were not settled by majority votes. If the joint Canadian and United States proposal were adopted by a two-thirds majority, it would still not be binding upon States. In order to become a rule of international law, such a decision would have to be signed and ratified. A disadvantage of the two-thirds majority rule was that it provided a temptation to seek a numerical majority instead of wider agreement.

25. The Australian representative's statement at the 11th plenary meeting had confirmed once again that the advocates of a six-mile limit did not dare to announce their real reasons for not agreeing to a twelve-mile limit, as was proved by the withdrawal of the amendments proposed by Ghana (A/CONF.19/L.10) to the second proposal adopted by the Committee. The provision that no State was entitled to enter the outer zone of another State by means of a warship or the superjacent air-space

by any military aircraft without prior notification to that State, although relatively mild, had been unacceptable to the Canadian and United States delegations and had consequently been withdrawn. The United States representative had tried to prove that the interests of other States were taken into account in the joint proposal, and had complained that the advocates of the twelve-mile limit had proposed no compromise. He had failed to explain, however, that the United States and its supporters only wished to compromise at the expense of States with a twelve-mile limit, which were legitimately anxious to secure the inviolability of their shores and the protection of their own fisheries.

26. The Conference had reached a stage at which the correct course was obviously to take the longer but surer path, and not to aggravate, but to relax international tension; the adoption of the Canadian and United States proposal, on the other hand, was bound to introduce a schism into international law and to increase international friction. The best way out was offered by the ten-Power draft resolution (A/CONF.19/L.9), which postponed the settlement of the question of the breadth of the territorial sea, but made some temporary provisions pending such a decision. Its chief advantage was that it opened the door to further efforts to achieve wide agreement on the questions before the Conference and, as the deliberations had shown, perhaps on some other outstanding problems as well.

27. Mr. GROS (France), while wishing to explain the reasons underlying the French delegation's position, thought that at that stage in the proceedings the debate should be raised to a somewhat higher level.

28. In 1958 forty-five States, representing the majority of the Conference, had expressed their consent to the adoption of a breadth of six miles for the territorial sea and of a six-mile zone in which fishing rights would not be reserved exclusively to the coastal States but would be shared among them and other States. Those forty-five States had found it fair that satisfaction should thus be given at the same time to the coastal States and to the States which traditionally engaged in distant-water fishing. Since the 1958 Conference the situation had developed rapidly. The Governments of the forty-five States, although representing a majority, had agreed to make a first concession—namely, that fishing in the belt between the six-mile and twelve-mile limits should be restricted to the present level. That was an important restriction, which represented a considerable sacrifice on the part of the fishing States. The delegations of the States which applied or claimed a twelve-mile limit had made no effort to change their position, confining themselves merely to criticising the position of other States. The latter, anxious to work out a generally acceptable solution, had then agreed to a second sacrifice by supporting the joint Canadian and United States proposal.

29. It was curious that, both in 1960 and in 1958, it was always the same States that were prepared to make sacrifices. In that connexion he recalled that an author often quoted at the Conference, Professor Gidel, had said that general agreement could not be reached within a reasonably short time on the breadth of the territorial sea except through acceptance of the contiguous zone; in that way it would be possible (according to Gidel) to satisfy those whom a uniform breadth of the territorial sea (sufficiently narrow to be generally acceptable) would leave without adequate protection. After more than thirty years Professor Gidel's remarks remained profoundly true. They explained why forty-five States, at least, were always prepared to make concessions in order to reach general agreement. For the same reasons, the French delegation would be unable to vote in favour of the ten-Power draft resolution (A/CONF.19/L.9), the object of which was to secure recognition for exclusive fishing rights up to a distance of twelve miles from the coast. Actually, there was no contiguous zone in the matter of fisheries. At the 2nd meeting of the Committee of the Whole, the USSR representative had said that the breadth of the territorial sea and of the fishing zone were two inseparable concepts. That was true, for a contiguous zone could only exist if there was a definite territorial sea; it did not exist in the abstract but was merely an extension, a complement of the territorial sea, justifiable only to the extent that a particular State might need to protect certain recognized interests beyond its territorial sea; and fishing was not yet recognized as forming part of those interests. To recognize it, agreement would have to be reached at the same time on a reasonable territorial sea.

30. The States which engaged in fishing in distant waters had consented to pay a high price for agreement, but they expected that, in return, agreement on the territorial sea would materialize. Yet such agreement did not exist because the delegations which supported the ten-Power draft resolution had pressed for the recognition of a twelve-mile territorial sea. There were two parties — a minority which urged the case for a breadth of twelve miles and a majority which looked for an agreement. The ten-Power draft resolution took for granted the concessions which the majority offered in order to reach such an agreement. The sponsors and supporters of the proposal would not retreat from their initial position, but expected at the same time to receive the benefit of the concessions held out by the other States. History would decide who, at the Conference, had tried to contribute to a *détente*. If the States which engaged in distant-water fishing agreed to vote for the ten-Power draft they would be surrendering their fishing rights in a twelve-mile zone. Later, in five or six years' time, the minority would return to the charge and would insist that the twelve-mile limit should be recognized as the only valid limit for territorial waters also. In fact, the ten-Power draft resolution offered no attraction whatever to the fishing countries. In that connexion he added that it was not, as had been asserted, large companies that would be affected by such a change in conditions but, in France, the interests of 55,000 small fishermen and, in other countries also, the interests of thousands of fishermen. The proposal disregarded the contribution made by the fishing States to the satisfaction of the world's growing demand for food. For all those reasons, the French delegation would vote against the ten-Power draft resolution.

31. He had said before what immense sacrifices acceptance of the joint United States and Canadian proposal (A/CONF.19/L.11) would involve for France. Nevertheless, his delegation was prepared to vote for that proposal. He hoped that that example of sacrifice

would be understood and followed by other delegations. If the opposing positions remained rigid, a majority — even a two-thirds majority — would not, of course, put an end to the debate. However, sympathetic co-operation could yield excellent results, as was shown by the outcome of the negotiations between the Governments of Denmark and the United Kingdom in regard to fishing in the Faroe Islands area and by the offer of arbitration made by the United Kingdom to Iceland.

32. Referring to the amendments submitted jointly by Brazil, Cuba and Uruguay (A/CONF.19/L.12), which provided for fair and balanced rules in the case of special situations, he said the French delegation would vote in favour of that conciliatory text.

33. Lastly, he thanked the sponsors of the draft resolution contained in document A/CONF.19/L.8, a timely one at a juncture when technical assistance was about to be considered in May at the Summit Conference at Paris. In that connexion he recalled that, in the course of his recent visit to the United States, the President of the French Republic had stressed that real peace could not exist without economic development. All countries able to do so — and France was one of them — should agree at least to make a start on co-operation to promote economic development.

34. Mr. RADOUILSKY (Bulgaria) said that the task of the Conference was to create a rule of international law on the breadth of the territorial sea and fishery limits which must be universal in character. Accordingly, the test of the proposals that had emerged from the Committee of the Whole and the new proposals before the Conference was: to what extent were they universal? An analysis of the results of the voting in the Committee showed that the proposal adopted by a majority by no means satisfied that test. Thirty-six delegations had voted for a twelve-mile limit, while forty-three delegations, including two which had also voted for the twelve-mile limit, had voted in favour of the Canadian-United States proposal. The action of those two delegations should be construed as denoting their preference for a twelve-mile limit.

35. Furthermore, three States whose coastlines accounted for nearly the whole length of the Pacific shores of South America had voted against both the proposals, because they wanted to establish a breadth of territorial sea well in excess of twelve miles. It was also significant that many of the States which had voted for the twelve-mile limit and against the " six plus six " formula were newly independent countries, having no powerful warships, merchant navies or fishing fleets, some of them economically under-developed, and all of them concerned for their security and the protection of their economic interests. Those States belonged to all geographical regions and had widely differing economic structures and political systems; furthermore, their aggregate coastline was vast. Accordingly, not only had the " six plus six " proposal not gained anything approaching unanimity in Committee but, in addition, the proposal, adopted by a slender majority, was at variance with the view of nearly half of the countries of the world.

36. The positions and views expressed during the general debate in the Committee were the outcome of two years' reflection. Hence, it seemed unduly optimistic on the part of certain delegations to believe that there would be a substantial change of vote in the plenary Conference. In view of those considerations, it was doubtful whether the adoption of a rule approved by a small majority would serve any useful purpose. Even if the " six plus six " proposal obtained a two-thirds majority, the diplomatic act embodying such a decision would probably not be ratified by countries which had voted against it. It was also doubtful whether it would be ratified by States abstaining in the vote, or even by certain States voting for the proposal; and to those countries should be added the States which had been debarred from participation in the Conference. The " six plus six " formula could thus never become a universal rule of law and could have no practical significance. The Bulgarian delegation further believed that such a decision would harm the cause of co-operation among States and would increase the number of disputes on fisheries and other questions. Attempts to impose on States decisions with which they could not agree created grounds for the violation of international law; certain States would undoubtedly invoke a rule of law which did not in fact exist, and that would give rise to much controversy.

37. An argument in favour of the adoption of some kind of rule by the Conference was that the existing situation was chaotic. His delegation considered, however, that the description of the current situation was tendentious and exaggerated. Many delegations had argued that every State was entitled to establish the breadth of its territorial sea between three and twelve miles; if that rule were adopted, there could be no question of a " chaotic " situation. The variety of limits observed by different States in accordance with their own interests did not indicate chaos but, on the contrary, argued in favour of the flexible three-mile to twelve-mile limit. A final decision on the breadth of the territorial sea could wait, in view of the considerable differences of opinion on the subject that still prevailed. The Bulgarian delegation would therefore vote in favour of the ten-Power draft resolution (A/CONF.19/L.9), which provided for the postponement of such a decision and also offered a solution for the problem of fishery limits which took existing economic interests into account.

38. Mr. BOUZIRI (Tunisia) recalled that, since his delegation's statement at the 19th meeting of the Committee of the Whole, a number of new events had occurred; the proposals submitted by Canada (A/CONF. 19/C.1/L.4) and the United States (A/CONF.19/C.1/L.3) had been merged into a single proposal, as had also the Mexican proposal (A/CONF. 19/C.1/L.2) and that of the sixteen Powers (A/CONF.19/C.1/L.6). He regretted that the latter proposal, although moderate, had suffered defeat in Committee; it contained wise principles which would come to be accepted one day. It could not be denied, nevertheless, that it did not correspond to the wishes of the majority of the countries represented at the Conference, that its support of certain progressive principles was premature and that, finally, the text submitted jointly by Canada and the United States was the one which best reflected the position of the majority. Though his delegation had criticized that text, it was an undoubted advance over the original United States proposal. It remained open to criticism in many respects

and was far removed from the proposals which the Tunisian Government would have liked to see prevail. However, his delegation was acutely conscious of the disastrous consequences that would ensue from a failure of the Conference. The accomplishments of the 1958 Conference would become naught, and violence would spread throughout the seas to the detriment of weak and unarmed peoples. On the other hand, if the joint United States and Canadian proposal were adopted, a partial success would be achieved and the Conference would be saved.

39. The Tunisian Government believed that the most important thing was to find possibilities of agreement step by step. First, the countries whose territorial sea did not have a breadth greater than six miles would join in one agreement. For all those countries, there would be a uniform limit which would be exactly that of six sea miles. Next, a limit for the contiguous fishing zone would be fixed for all countries, whatever their position with regard to the breadth of the territorial sea; that limit would amount to twelve miles. If those partial results were achieved, a substantial stage would have been completed on the road towards a general agreement which would inevitably come about at a later time.

40. In that spirit, the Tunisian delegation would vote for the draft submitted jointly by the United States and Canada. The Tunisian delegation's support of that proposal did not, however, imply that its application should be absolute and universal or that the principles it contained should be rigidly applied to all countries that might accept the proposal. For its part, Tunisia — which at present applied the three-mile limit in respect of its territorial waters — would have progressed towards an ideal solution by adopting a breadth of six miles for the future. The recognition of its right to a fishing limit of twelve miles would constitute a satisfactory advance. He wished, however, to make reservations concerning the rights granted by the joint text to foreign fishermen. It would not be realistic to require countries which had fixed the breadth of their territorial sea at twelve miles to waive that limit immediately. Even if the joint proposal were adopted, the position of States having a territorial sea of twelve miles should be respected.

41. By and large, the Tunisian delegation believed that the adoption of the joint Canadian and United States proposal would put an end to the anarchy in the law of the sea, reduce the possibility of incidents and contribute to establishing a *modus vivendi* between the States which would accept the six-mile rule and those which would remain faithful to the twelve-mile rule. In practice, it would be necessary to appeal to everyone's spirit of understanding rather than to take advantage of a rule of law that might perhaps become established or of the opposition to that rule of law. He hoped that the adoption of the joint draft would ultimately produce truly universal agreement.

42. Mr. GUDMUNDUR I GUDMUNDSSON (Iceland), introducing his delegation's amendment (A/CONF. 19/L.13) to the second proposal adopted by the Committee of the Whole (A/CONF.19/L.4, annex), recalled that Iceland had whole-heartedly supported the original Canadian proposal (A/CONF.19/C.1/L.4) for a six-mile territorial sea plus a six-mile fishing zone, which had, in its opinion, represented a fair and honest compromise. Since that proposal had been modified by a clause allowing fishing by foreign nationals inside the twelve-mile limit for a period of ten years, however, his country could no longer support the joint Canadian and United States proposal as adopted by the Committee.

43. The underlying idea of that proposal was to provide a transition period in which the industries affected might adjust themselves to the new situation, and the countries which were prepared to support that principle were obviously taking that attitude in a spirit of compromise and helpfulness. He hoped, however, that those delegations would understand that such a principle could not reasonably be expected to apply to the special position of Iceland, whose people were so greatly dependent on fisheries for their livelihood and economic development. Iceland had adopted a twelve-mile fishing limit in 1958 because experience had shown that without such measures the stocks of fish in Icelandic waters would risk depletion. In fact, the measures that had been adopted would benefit not only Iceland, but all those fishing off its shores. His delegation had had no choice but to submit its amendment which, if adopted, would exempt Iceland from the application of the general principle of a ten-year limitation. The vote on the Icelandic proposal (A/CONF.19/C.1/L.7/Rev.1) in the Committee of the Whole had amply shown full realization throughout the world of the special situation of his country. The facts spoke for themselves, and it was a matter of plain commonsense that Iceland's situation was one of hardship.

44. The question of special situations was referred to in paragraph 5 of the new Canadian and United States proposal (A/CONF.19/L.11), which was a saving clause concerning bilateral or multilateral fisheries agreements. But the Conference was not in a position to decide whether or not such agreements would be concluded, and pious hopes could not solve an urgent and immediate problem. The Conference had the heavy responsibility of settling the problems submitted to it: it could not pass them on to anyone else. His delegation therefore believed that the paragraph in question not only failed to provide a solution, but carried the danger of mistakenly implying that the problem had already been solved. A similar attempt to persuade the Conference to evade its responsibilities in the matter had been implied in the United Kingdom representative's suggestion that the question of the applicability of the ten-year period to the Icelandic situation should be submitted to arbitration. However, to be impartial, a decision of that kind had to be based on established criteria. It was the function of the Conference to establish such criteria and to solve the problem outright. The United Kingdom representative seemed reluctant to allow the Conference to settle the matter by a free and frank vote, for fear lest the decision would again be in favour of Iceland, as it had been in the Committee of the Whole.

45. The United States representative was labouring under a misconception in thinking that progress was being made in negotiations between Iceland and the United Kingdom. No such negotiations were in fact taking place.

46. In conclusion, he stressed that the adoption of his delegation's amendment was a matter of the utmost

importance to his country. His delegation's votes on all the proposals and amendments that had been submitted would be guided by that fundamental fact.

47. Mr. BARNES (Liberia), introducing the draft resolution by Ethiopia, Ghana and Liberia (A/CONF. 19/L.8), thanked the United Kingdom and the United States delegations for their support. The proposal was self-explanatory. With the development of the international law concerning fisheries and the stress now laid on fishing, as demonstrated by the efforts to conserve fishing rights, the coastal States had shown a concomitant desire to improve fishing techniques. Technical assistance would be required to adjust their techniques to the expected change in international law. That would be particularly important for countries whose economies were largely dependent on fishing, a fact on which emphasis had been laid throughout the Conference. If the request in the draft resolution came to fruition, the coastal States engaged in fishing, or likely to engage in it in future, would derive great economic advantages. Furthermore, when the States now fishing the waters of other States eventually withdraw, the latter would be able to continue to exploit the living resources of the sea and to maintain the equilibrium. The economic technical assistance referred to was intended to cover technical assistance in the broadest sense, especially the development of fishing and the fishing industries and such subsidiary activities as canning and processing. If the draft resolution were adopted, it was to be hoped that it would not remain a dead letter, but that it would be put into effect with all the resources at the command of the United Nations.

48. Mr. GLASER (Romania) wished to reply to certain arguments which had been advanced in the Conference. It had been said that some sort of solution should be reached. For his own part, he did not agree that a bad solution was preferable to no solution at all. The answer to the delegations which opposed the general recognition of the twelve-mile rule was that countries which now applied the three-mile limit would lose nothing by extending the breadth of their territorial sea to twelve miles. By contrast, the general application of a six-mile limit would amputate the territorial sea of all those countries which had already adopted a twelve-mile limit. Secondly, it had been argued that the newly independent States would one day possess their own fleet and that it would be in their interest to be able to employ that fleet in as broad an area of the high seas as possible. That argument was false. In order to develop, those young States must enjoy a juridically favourable situation. Without such a situation, in other words without a sufficiently broad territorial sea, they would hardly ever come to have a sufficiently large fleet.

49. Thirdly, it had been said that the ten-Power draft resolution (A/CONF.19/L.9) was not realistic. In fact, that draft resolution took note, in an entirely realistic manner, of the existence of a disagreement. Likewise, it recognized the right of the coastal State to practice fishing up to a distance of twelve miles from the coast; that was a realistic solution and for that reason the Romanian delegation would vote in favour of the draft resolution.

50. The true reason why a general agreement concerning the breadth of the territorial sea appeared to be impossible was that opinion was sharply divided over the question of the access of warships to the area lying inside the twelve-mile line. So far as the limit of fishing zones was concerned, agreement could not be reached because the States which traditionally fished in the waters of other States did not wish to surrender their so-called acquired rights. It had been stated that it would be unjust and brutal to deprive certain States of the exercise of an ancient right; but to argue thus was to forget the injustice done to millions of persons who, by reason of those abusive practices, had for centuries been deprived of the resources of the sea near their coasts.

51. Replying to those delegations which claimed that the failure of the Conference would cause anarchy and chaos, he said that there had never yet been any unanimously recognized rules on the breadth of the territorial sea; yet maritime traffic had not been impeded. After all, the outer limit of the territorial sea was the maritime frontier of a State. It was inconceivable that the frontier could be altered without the consent of the State concerned.

52. Mr. AMONOO (Ghana) recalled his delegation's reference at the 13th meeting of the Committee of the Whole, during the general debate, to the neeed for technical assistance for coastal States in developing their fishing resources. Since then, that suggestion had received almost universal support and the draft resolution co-sponsored by Ghana (A/CONF.19/L.8) had been prepared in co-operation with many other delegations. The draft resolution raised no controversial issues and was in no way prejudicial either to the proposals adopted at the 1958 Conference or to the proposals now under consideration. On the contrary, its adoption should have far-reaching and beneficial results. The draft resolution was self-explanatory, and he regarded it as a potent means of determining the goodwill of all delegations to the Conference. He hoped that the great and small Powers which had pledged their support would confirm it by voting in favour of the draft resolution and that technical assistance to coastal States in improving and expanding their fishery and fishing industries would soon become reality, through general co-operation.

The meeting rose at 12.30 a.m.

THIRTEENTH PLENARY MEETING

Tuesday, 26 April 1960, at 10.10 a.m.

President: Prince WAN WAITHAYAKON (Thailand)

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 (A/CONF.19/L.4, L.5/Rev.1, L.6, L.8, L.9, L.11 to L.13) *(continued)*

[Agenda item 9]

1. Mr. GARCIA HERRERA (Colombia) said that his delegation had stated at the close of the general debate