Second United Nations Conference on the Law of the Sea

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1st meeting

Extract from the *Official Records of the Second United Nations Conference on the Law of the Sea (Committee of the Whole – Verbatim Records of the General Debate)*

STATEMENTS MADE IN THE GENERAL DEBATE IN THE COMMITTEE OF THE WHOLE

First Meeting

Monday, 21 March 1960, at 11 a.m.

Mr. SHUKAIRY (Saudi Arabia): Our committee room was really a concentration camp, and we are gratified that, through the collaboration of the United States and the Soviet Union delegations, our liberty has been ensured. Here we can speak and even breathe properly and easily.

Mr. Chairman, it so happens, and it is a happy coincidence, that it falls to me to be the first privileged to extend to you my heartfelt congratulations on your election as Chairman of this Committee of the Whole. We have known you to be one of the able and outstanding figures of the United Nations, remarkably distinguished for your impartiality, resourcefulness and devotion. Difficult as our problem may be, we can find in your skilful chairmanship abundant guidance for us to smooth our way, but no matter what the outcome may be one thing will no doubt be a success. It is your tactful leadership, which brings to this Conference all the noble traditions, not only of your country but of the Latin American States, whose contributions to international law and justice are a source of permanent and universal peace and justice.

We are assembled again in the United Nations Conference on the Law of the Sea, and it is my pleasant duty, first and foremost, to convey to this distinguished gathering of jurists and diplomats the greetings of our Government and our people. It is our ardent hope that at this stage of our journey on the Law of the Sea, our passage may be innocent, our navigation secure and our landing safe. We trust that our work will be a success, and to this end we pledge our support from our heart of hearts.

At the outset, I should like to put on record a word of caution. In spite of all appearances, the point I am raising is not formal. Neither is it marginal. It is cardinal, down to the core, and central down to the last atom. It is a point of substance. At a conference of law, held under United Nations auspices, the point I have in mind should not escape our attention, nor should its relevance or bearing be discarded with a light heart.

This Conference of ours has been designated as the Second United Nations Conference on the Law of the Sea. For my part, I have avoided this designation in my introductory words. This I have perpetrated, as the legal dictum under English traditional system runs, not merely by omission but, rather, by commission.

It is conceded that for purposes of special designation and easy reference, and for the systematic enumeration of our records, it is admissible to speak of this Conference as the Second United Nations Conference on the Law of the Sea. But

in fairness to the law of the sea itself, and to the vital national and international interests we have come to tackle, ours is not the Second Conference. In essence, it is a continuation of the Conference that was held in Geneva in 1958. We are back again to the Conference. It is one and the same, reconvened, resumed and continued.

I trust that this point is not taken as pointless - as much ado about nothing. On the contrary it is no ado at all, and has everything in it. In our seafaring endeavour, it stands as a lighthouse pointing out our present station and our final destination. And for a gathering of distinguished jurists and talented diplomats, as ours is, this point merits careful consideration and profound reflection.

The significance of the point, however, is not academic; nor does it stem from a quarrel over phraseology or terminology. It is very much over and above that. It is the oneness of our work, and indeed our only assignment. When I press the point of one and the same conference, I do not mean to be drastic or dogmatic. I simply mean to say that we are back again to our work - the very same work, and I dare say the unfinished work. I stress "unfinished", because, honestly and sincerely, the work we have done so far is unfinished and will remain unfinished for ever and ever unless and until we make every possible effort to bring the present session to success - real success.

In the spring of 1958 we were able to prepare four conventions dealing with, first, the Territorial Sea and the Contiguous Zone; 1/ second, the High Seas; 2/ third, Fishing and Conservation of the Living Resources of the High Seas; 3/ fourth, the Continental Shelf. 4/ Also, we adopted an Optional Protocol 5/ for the compulsory jurisdiction of the International Court of Justice in certain disputes arising out of those conventions.

This result has been received with appreciation by the General Assembly of the United Nations, and in its resolution 1307 (XIII) the Assembly has referred to that achievement as "an historic contribution to the codification and progressive development of international law". No doubt this is a well-deserved tribute. Yet, without minimizing the work so far done, it must be admitted that what remains undone is the major part of the whole undertaking. The breadth of the territorial sea and the fishery limits stand today unsettled. These are no little items. It is true, we have prepared a number of conventions heavily loaded with numerous and various articles. But work, and international work in particular, is not to be measured by its volume and its weight. Our work on

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1/ Official Records of the United Nations Conference on the Law of the Sea, Vol. II, Annexes, document A/CONF.13/L.52.

2/ Ibid., document A/CONF.13/L.53.

3/ Ibid., document A/CONF.13/L.54.

4/ Ibid., document A/CONF.13/L.55.

5/ Ibid., document A/CONF.13/L.57.

the Law of the Sea is not one of cargo and freight, so to speak. It must be measured by its final impact and by its general effect. With this criterion in mind, we can safely say that the law of the sea can only be regulated once the territorial sea is settled - successfully settled and finally settled.

We cannot, therefore, sit back in this Conference of ours happy with the idea that we have already adopted four conventions and a protocol in respect of the law of the sea. Without an acceptable formula for the determination of the territorial sea, these conventions of ours will remain outside the sacred temple of international law.

The present session of the Conference stands face to face before the bar of history. Ours is a decisive conference that is bound to decide not only the destiny of the territorial sea but the law of the sea in its entirety. There lies in our deliberations a great responsibility that must be shouldered in the best interests of international relations. It seems to us the end will be complete success or complete failure, with no other alternative. The question admits no half solutions or even shaky adjustments. The outcome is clear cut and decisive. It is a law of the sea, or no law of the sea at all. If we succeed in this session, as we hope, it will be an over-all success for the whole work, past, present and future. Should we not, which God forbid, the work we have done, the conventions we have adopted, would find their way to the archives of the Codification Conference of 1930 at The Hague - a conference that was inaugurated with laurels, and passed away with wreaths of mourning.

It is not my wish, at the threshold of our meeting, to bring to the Conference a message of despair or even one of discomfort. What I wish to bring home to our minds is the interdependence and inseparability of the law of the sea. It is true that the law can fall into parts and divisions, and that it can be reduced into more than one convention. But the fact, the central fact, remains that without an acceptable instrument on the width of the territorial sea all conventions on the law of the sea become drowned at the bottom of the sea, as wreckage with little hope for salvage.

This is not a figurative assessment of the present situation. The General Assembly in its resolution 899 (IX) has expressed the view that the various matters of the law of the sea are parts of a whole and are "closely linked together juridically as well as physically". Moreover, in paragraph 29 of its report to the General Assembly the International Law Commission declared that "judging from its own experience, the Commission considers - and the comments of Governments have confirmed this view - that the various sections of the law of the sea hold together ...". 6/

With such a balanced opinion pronounced by the grand jurists of the United Nations, we should know where we stand at the present stage of our work. We must not allow ourselves to be misled by the results so far achieved. We should not

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6/ Official Records of the General Assembly, Eleventh Session, Supplement No. 9 (A/3159), para. 29.

be lured or even lulled by the many conventions we have adopted in past sessions. The General Assembly, in commending our work as "an historic contribution to the codification and the progressive development of international law", 7/ was I am afraid - and I say this with all due courtesy - simply placing on record a routine courtesy. No doubt, there was a certain amount of success scored, but the laurels were very much bigger than the achievement itself.

I say that without any apology, for it is only through candour that we can hope to redeem our past failures and make up for our shortcomings. As a matter of fact the ground we have covered was already a well established field of international law long before we were invited by the United Nations to assemble as a conference in Geneva in 1958. The Hague Conference of 1930 stands in testimony. As was rightly pointed out by Professor Colombos in his valuable work on the International Law of the Sea,

> "although the Conference /of the Hague/ was unable to reach an agreement on the subject of territorial waters, it succeeded in preparing a Draft Convention on 'The legal status of the territorial' sea for future consideration." 8/

In dealing with the same point, Professor Lauterpacht, in his well known book on International Law, stated as a fact that

> "with regard to territorial waters, the Conference /of the Hague/ was unable to adopt a convention as no agreement could be reached on the question of the extent of the territorial waters... /although/ some measure of agreement was reached on such questions as the legal status of territorial waters, ... the right of innocent passage, and the base line etc...". 9/

These facts that I have brought to light are not intended as a historic recapitulation of the problem, but are intended as a warning to this Conference that we are now in almost the same position that prevailed thirty years ago. Except for its name, the Geneva Conference of 1960 is the Hague Conference of 1930, just standing in its shoes but, regrettably, without even a change of model or fashion.

This is no sarcasm, Mr. Chairman. It is the reality in all its truism. If we care to seek the evidence we need only compare word for word the text we adopted in Geneva with the text suggested at the Hague.

7/ General Assembly Resolution 1307 (XIII) of 10 December 1958.

8/ C. John Colombos, The International Law of the Sea (London, New York, Toronto, 1954), p. 21. For the text of the Draft Convention, see League of Nations Publications, V. Legal, 1930.v.16 (document C. 351 (b). M. 145 (b). 1930 v), p. 212 ff.

9/ Oppenheim's International Law, Vol. I, 8th ed., edited by Lauterpacht (London, 1955), p. 62, 63.

There is, however, one aspect to be regretted, and for this matter my remark embraces both the breadth of the territorial sea as well as the remaining topics of the law of the sea. I refer to our disposition vis-à-vis the work of the International Law Commission.

After strenuous, patient labour, and on the basis of expert knowledge furnished by the Secretary-General of the United Nations, the International Law Commission has done the ground work for our Conference and presented to us a draft code covering the whole field of the International Law of the Sea, 10/ neatly prepared and ably formulated. It was a masterpiece of work that commends itself readily for adoption, and, with slight variations here and there, it would even invite our ratification. In a word, in our Conference of 1958 we should have adopted in toto the main principles pronounced by the International Law Commission.

But instead of pursuing such a worthy course, we have brushed aside the conclusions of the Commission on the breadth of the territorial sea. With the same courage we have inflicted a number of mutilations - and I use the word "mutilations" with full intentions - in the rest of its code, those mutilations, regrettably, which appeared and were embodied in the Conventions we have adopted.

Gloomy as it may be, Mr. Chairman, the present situation is neither incurable nor hopeless. We still have the remedy well in hand; and the die is not cast. Our chance of success lies in our approach at the present session to the question of the limit of the territorial waters. And it is only within these limits that we can anchor our success in the present Conference, and compensate for the damage caused by the past Conference.

Such an appraisal does not fall within the realm of imagination or even exaggeration. The breadth of the territorial sea is the master key to the Law of the Sea in its entirety, in time of peace as in time of war. I refer to war, without reluctance or hesitancy, for it is no use denying that the war potential and the war effort is one major factor plaguing the mind of more than one State in approaching this problem. Rights and duties of States, all in all, begin and end on both fringes of the territorial sea. A bird's eye view on the field of the Law of the Sea will no doubt reveal this absolute truth. The juridical status of the territorial sea, the right of innocent passage, the freedom of the high seas, the contiguous zone, the continental shelf, the right of visit, the right of hot pursuit, the right to fish, the right to lay submarine cables and pipe-lines and a host of other legal norms, rights and duties all will become meaningless unless and until the territorial sea is well defined in a generally accepted formula. Agreement on this matter is in fact putting teeth into the Conventions we have adopted. Without teeth, I am afraid, we suffer not only stomachache but international headache.

10/ Official Records of the General Assembly, Eleventh Session, Supplement No. 9, para. 33.

It is mainly due to the far-reaching significance of the breadth of the territorial sea that the General Assembly, in its resolution 1307 (XIII), has rightly observed that

> "agreement /on the breadth of the territorial sea and fishery limits/ would contribute substantially to the lessening of international tensions and to the preservation of world order and peace,".

Thus the position taken by the General Assembly on this matter is crystal clear. In the words of the General Assembly, the problem we are to attack in the present session can lessen or worsen international tension. It can preserve world order and security, and can likewise preserve world disorder and insecurity. And it is our conduct or misconduct in this Conference which will lead us one way or the other.

The question then arises, how are we to tackle the problem? With what approach? And where to begin?

Convened as we are under United Nations auspices, and indeed, acting as we are under a resolution of the United Nations, it is only proper and natural to seek guidance from the United Nations. Happily the source of guidance is abundant. We have before us the work accomplished by the quasi legislative organ of the United Nations. I refer to the International Law Commission. With this fountain-head at our command, we can proceed to explore the avenues of a reasonable agreement. I say "reasonable" because arbitrary positions based on caprice are unmanageable in this Conference or any other conference. And if we are to stand by caprice, if we have come with fixed positions, and if we intend to cook another convention by pressure, or in a highly pressurized pot, we had better from the very start disperse immediately and let the question drift anywhere. Let it go where it may go.

But it is to avoid such a result, and I would say such a catastrophic result, that we must, all of us, in interests of this voyage of ours, submit to the rules of navigation and yield to our able pilot. This is the code for every voyage, if we mean a voyage safe and secure. In this instance our pilot is the International Law Commission; and let us see how best we are to be guided.

On the breadth of the territorial sea, it is true, the Commission did not take a decision. There is no doubt about that. I mean a final decision. But the commission, pronounced certain principles and conclusions which no doubt at the same time, spell out the necessary elements that constitute the basis for us to take the decision. Instead of setting out the limits of the territorial sea, the International Law Commission found it proper and wise to leave the matter to be decided by the Conference. But the matter did not hang in the air. The Commission has given our Conference ample guiding principles, if we are not to stand impregnable to legal guidance.

So, what are those guiding principles? In the first place the Commission declared that "International practice is not uniform as regards the delimitation of the territorial sea". This is a finding which we cannot challenge. It is

common knowledge, now, that State practice ranges between 3, 6, 9 and 12 miles, with some delimitation as far as 200 miles. But this non-uniformity is not a novelty. It has been going on for a number of decades. Professor Lauterpacht, a distinguished authority on Anglo-American international jurisprudence, came to the conclusion that

> "with regard to the breadth of the maritime belt, various opinions have in former times been held and quite exorbitant claims have been advanced by different States, such as a range of sixty or a hundred miles..." 11/

To mention a few illustrations in support of this non-uniformity, we can refer - and I am making these references with all due respect to the States represented here in the Conference - to Denmark's claims for fishing rights within sixty-nine miles of the coasts of Greenland. I refer to the Russian Ukase of September 1821, asserting jurisdiction within a hundred Italian miles from its coasts, and finally to the claim of the United States to assert jurisdictional right of control over the seal fishery in respect of the Behring Sea in its entirety.

As a matter of fact, the United States - and I say this, again, with all due respect to the United States Government and the United States delegation - has made a great contribution to create this state of non-uniformity of the breadth of the territorial sea.

By the terms of the treaty of Guadalupe of 2 February 1848, 12/ - the middle of the nineteenth century - Mexico ceded to the United States a territory lying northward of a line drawn from the mouth of the Rio Grande west to the Pacific Ocean. In his Digest of International Law, Mr. Hackworth, the legal adviser of the Department of State of the United States, contends that

> "By virtue of this treaty, the United States assumed...jurisdiction over the region thus ceded, both territorial and maritime, ... which embraced all of the ports, harbours, bays, and inlets along the coast of California" - and this is the important part of the quotation - "and for a considerable though perhaps indefinite distance into the ocean,...". 13/

This non-uniformity, however, is not to be found only in the precedents of State practice. It has become a fact noted judicially, to borrow the term obtaining under the English legal system. The British High Court of Justice sitting as a Prize Court in 1916 in the famous Bangor case, stated:

> "The limits of territorial waters", - and here the reference is directly to the problem we are attacking at the present session - "in relation to national and international rights and privileges, have of recent years been subject to much discussion." 14/

11/ Oppenheim's International Law, op. cit., p. 490.

12/ Martens, Nouveau Recueil Général de Traités, tome XIV, p. 7.

13/ Hackworth, Digest of International Law, Vol. I, p. 570.

14/ /1916/ p. 181, 184.

This dictum is of far-reaching significance for when in the United Kingdom, where the rule of three mile limit is held with a great deal of sanctity and reverence, the British High Court of Justice - and what a supreme tribunal it is - takes judicial notice that the matter, as far back as 1916, has been subject to much discussion with regard to the international and national rights within the maritime belt, we can realize that non-uniformity in respect of the breadth of the territorial waters, was the rule of the age.

It was due, perhaps, to this chaos in this field of international law that the Hague Conference of 1930 was held to discharge the very same undertaking we are wrestling with at the present moment. That Conference, regrettably, failed, but it has left for our Conference certain salient facts that should influence our present deliberations.

First, the Conference has disclosed a wide diversity of opinion on the limits of the territorial sea. The member States have fallen into eight categories, namely, for 3, 4, 6, 10, 12 miles, and for 20, 30 and 60 kilometres for those States which prefer a delimitation as the basis of kilometres.

Second, the Second Committee of the Conference - and in the shoes of that Second Committee this Committee of the Whole is standing now - which was dealing with the subject refrained from taking a decision on the question whether existing international law recognizes any fixed breadth of the belt of the territorial sea.

Third, faced with differences of opinion on this subject, the Committee preferred, in conformity with the instructions it received from the Conference, not to express an opinion on what ought to be regarded as the existing law, but to concentrate its efforts on reaching an agreement which would fix the breadth of the territorial sea for the future - exactly the same undertaking we are now attempting.

This state of affairs has persisted to the present day. It lives with us up to this moment; and if any evidence is required, we need only consult the minutes of our meetings in 1958. And it is precisely because of this non-uniformity that we are assembled again in this Conference.

But, happily enough, we are not left in a state of legal vacuum. The International Law Commission has filled the vacuum, not by material prefabricated for the occasion but by material already in the hands of the international community.

In doing so, the Commission has enunciated two principles: first, that "international law does not permit an extension of the territorial sea beyond twelve miles"; 15/ and, second, that "the extension by a State of its territorial sea to a breadth of between three and twelve miles was not characterized....

15/ Official Records of the General Assembly, Eleventh Session, Supplement No. 9 (A/3159), para. 33, Article 3.

as a breach of international law.....". 16/ These are pronouncements of the International Law Commission.

With this in mind, we may ask then, what is the legal import of the conclusions of the International Law Commission on this matter. This is a pertinent question, the answer to which can be so decisive as to determine the work of our Conference.

The irresistible finding of fact which underlies the conclusions of the Commission is that the three mile limit is no more an established rule of international law, and that a twelve mile limit is not an encroachment on the high seas and hence not a violation of the principles of international law.

I do not propose to trace the history of the three mile rule, its genesis, its evolution and its application. Neither do I deem it at this stage convenient to enter into a detailed legal analysis of this problem. In the earlier session of our Conference in 1958 I made a modest endeavour to place before the Conference comprehensive research on this subject, based on State practice, case law, jurisprudence and treaty precedents - mostly drawn from Anglo-American sources. This study, falling in four main speeches, is printed now in pamphlet form and will be distributed, I hope, within a few days.

That is why what I propose to say at this stage is that the three mile limit may be taken but as a minimum, not as a maximum. This proposal of ours is based not on legal fiction, or even legal literature, but on sound legal precedent. In the leading American case, Manchester v. Massachusetts - and for this matter I invite the keen attention of the delegation of the United States - the court said:

> "We think it must be regarded as established that, as between nations, the minimum" - "minimum" is the word employed by the court - "limit of the territorial jurisdiction of a nation over tide-waters is a marine league from its coast". 17/

This is the pronouncement of a distinguished American court in a well-known case tried by it.

It is with such a judicial verdict and a host of others that the three mile rule as a maximum has become condemned as the "fallen idol" of Professor Gidel, and as the "abandoned shore-batteries rule" of Professor Anzilotti, that representing the jurisprudence of the Conference of the Latin Americans. This latter distinguished jurist, Anzilotti, has gone even further. He stressed the absence of any rule of international law on the matter. As far back as 1917, he proclaimed that no rule of international law has been developed to take the place of the abandoned "shore-batteries" rule. 18/

16/ Ibid., Commentary to Article 3.

17/ 35 Lawyer's Ed. 159, 164.

18/ Rivista di diritto internazionale, Vol. XI (1917), p. 102 ff.

These views are not mere pronouncements of scholars on international law. They are nothing but a reflection of State practice established ever since the middle of the nineteenth century. One illustration is sufficient to corroborate this assertion. Out of ironic coincidence, the illustration I have in mind refers to both the United States and Mexico, the former being an exponent and the latter being an opponent of the three mile rule.

The territorial waters of Mexico and the United States have been fixed by the Treaty of Peace, Friendship, Limits and Settlement concluded between these two countries on 2 February 1848, at nine nautical miles. That was not all. Both States have taken action on the strength of the treaty. This is not remaining a dead letter; they have taken action on the treaty.

In his note of 19 August 1848, Mr. James Buchanan, Secretary of State of the United States, declared that the territorial waters extended three nautical leagues - the reference is to leagues, not to miles - while Mexico, on the other hand, published in the Diario Oficial of 31 August 1935, a decree fixing the breadth of the territorial waters at nine nautical miles.

This State practice, based on a treaty between the United States and Mexico, does not only reveal the legal situation in 1848. It must certainly point out what the situation should be in 1960. If nine nautical miles was recognized by the United States and Mexico as the breadth of the territorial sea in the age of gun powder, in 1848, what should the limit be at the present time? What should the limit be when the Sputnik and Pioneer V are now penetrating into the interplanetary system, as the first honoured guests of the stars?

But we need not wonder about this limit. The International Law Commission made two findings - one of fact, and one of law. The first is that a twelve mile delimitation of the territorial sea is supported by State practice; and the second, that such a limit is not a breach of international law. This is the legal position for those whose minds are ready to surrender to the dictates of law. If we seek the law, then here is the last word in law pronounced by the International Law Commission. Nothing remains but to be guided by the law - not to classify or set aside the words of the law.

I said "guided", although in fact I should have said "abided". We should have abided by the pronouncements of the International Law Commission. For I hasten to submit, although I hate to say so, that for us, as a conference of the United Nations, there is every reason to accept in this particular case the formulation of the International Law Commission. What are the reasons? This is a fifteen-man Commission, composed of distinguished jurists, representing all the main legal systems of the world - the Anglo-American, the continental, the socialist East European, the Islamic and the Latin American, as well as the legal trends in the East and in the Scandinavian countries.

With such a composition, I submit, and rightly so, that short of a flagrant violation of the law or a serious miscarriage of justice, inherent in the work of the Commission, we cannot by a stroke of the pen just ignore the fundamentals that were recognized by the International Law Commission.

These fundamentals - and I submit they are basic - were not arrived at haphazard with a lazy mind and easy labour.

First, the Commission was cognizant of all the studies undertaken by the League of Nations in this field. Second, it had at its disposal all the expert knowledge that the United Nations could provide. Finally, the Commission took no little pain, no little patience and no little labour in studying the problem. It was after its fourth, fifth, sixth, seventh and eighth sessions, running for five consecutive years - just imagine, gentlemen, five consecutive years - deliberating, arguing, researching and hairsplitting, that the Commission was able to present to the Conference its formulation on the breadth of the territorial sea. But how far have we been influenced, if at all, by the labours of that honourable and highly distinguished Commission?

On 27 April 1958, at our concluding meeting, we adopted a resolution which reads:

> "The Conference resolves to pay a tribute of gratitude, respect and admiration to the International Law Commission for its excellent work in the matter of the codification and development of international law, in the form of various drafts and commentaries of great juridical value". 19/

I repeat, "of great juridical value". Well, gentlemen, if we are to stand by our word that the Commission deserves a tribute of gratitude, admiration and so on for its excellent work, which we describe by our resolution as being of "great juridical value", how can we discard the fundamental principles enunciated by the Commission itself? How can we hesitate to accept a twelve mile limit which has been declared by the Commission as no breach of international law?

If we speak of juridical value, we must admit its value, the more so when we are convened as a conference of law. In this Conference we have not an official value and a black market value; our values must be one and the same. If there is juridical value in the work of the Commission, well, let us stand by that.

It stands to reason, therefore, that in order to render juridical value, genuine value, and not merely lip service, we must adopt a formula along the lines pointed out by the Commission - namely a delimitation of the territorial sea within a maximum of twelve miles.

Such a formula is a compromise by itself. It allows a degree of flexibility up to a rigid maximum. It is a flexibility within rigidity. States content with three, four or nine miles can remain so to their heart's content. States with a twelve mile limit stand on their own right, and will extend no more.

19/ Official records of the United Nations Conference on the Law of the Sea, Vol. II, annexes, document A/CONF.13/L.56.

Apart from flexibility, there is also the advantage of practicability, short of which, I submit, no formula can have the merit of workability. It is common knowledge that the "twelve-milers" represent a cross section of States all over the world - in Asia, Africa, Latin America and Eastern Europe. This is no political or ideological grouping. Those States represent various political systems and different social and economic orders. Their common stand - and I say it is a common stand - for a twelve mile rule is an historic human evolution that was brought about by different factors which I do not need to detail at the present moment. Behind their twelve-mile limitation there have become established interests which cannot and ought not to be subjected to any jeopardy. You cannot expect these States to compromise their vital national interests. Neither would they be willing to betray their defensive or economic necessities. Each State, as rightly declared by Professor Hyde in his book on international law, "must itself be the judge of what violates its own rights and interests".

As to other States, whether they are three-, six- or nine-milers, the formula which we have suggested - and so far at this stage it is nothing beyond a suggestion - of a twelve mile maximum does not inflict upon them any injury. The formula is neither discriminatory nor derogatory. It does not deny them any advantage accorded to others. They can also extend their limit to twelve miles, whether for pleasure or imitation or interest, as the case may be.

Lastly, the formula of a twelve-mile limit is all-inclusive and comprehensive. It satisfies all, and, I submit, grieves none. Within this formula, all delimitations are embraced, and indeed with sympathy. But any other formula is exclusive, simply because it excludes a great number of States represented here in this Conference. I suppose I need not tell the Conference that the lesser limitation is included in the greater, and not vice versa. This is a geometric axiom, too simple to call for a reminder before a conference of law.

Yet I cannot conclude without alluding to the one single factor which, to my modest calculation, constitutes the main reason for the division of the Conference. I mean the military aspect of the problem.

I know that this aspect, as far as our deliberations are concerned, has been sealed with silence by all. Never was it put in the foreground. It has always been kept in the background. None spoke of it, but more than one is labouring under it. And it is worth-while that for this matter the ice should be broken.

All the various delimitations have a military aspect, defensive or offensive, call them what you will - these are only adjectives that even history has not always been able to determine. But because it is devoid of discrimination, the formula of twelve miles, with all its military advantages or disadvantages, is open to all and closed to none. And I repeat that that formula, with what it offers in the way of either a military advantage or a military disadvantage, is open to all and closed to none. There is no discrimination. It does not destroy the present balance, or any balance at all. Neither would it prejudice

the positions and attitudes of States, one way or the other. Those who feel aggrieved by a twelve-mile limit because they are "three-milers" or the like, can extend their limits up to the maximum to meet their military needs, if they so desire. The balance would, thus, continue well-balanced, with no chance for any State to gain any preponderance.

But those worried most about this military aspect are the last to be told of its insignificance. With the world what it is, and what it is going to be, I seriously contend that the military aspect of the territorial sea has become too remote to call for any serious consideration. Man's conquest of outer space has made too negligible inner space, let alone the ocean. In this age of intercontinental ballistic missiles the sea is becoming a primitive, a poor and a modest field of military operations. This is how we see it with our primitive, poor and modest knowledge of military tactics and strategy.

But be that as it may, even from the military aspect a formula of twelve miles as a maximum leaves no State at the mercy of another. Viewed from the viewpoint of military potentialities, the "haves" (and they are few) and the "have-nots" (and they are many) who are represented in the Conference can put the twelve-mile maximum to their best interests, with equality to all and disability to none.

Finally, Mr. Chairman, let me assure you that the twelve mile formula offers the only chance for the success of the Conference. It is the only chance that stands now before the Conference. This is no adamant position dictated by sheer obstinacy. In essence, it is realism accorded proper realization.

In the past we have resisted this realistic approach, and it is precisely because of this obstinacy against the realities of international life that the 1930 Conference at the Hague and the 1958 Conference in Geneva failed on this point, and miserably failed.

Today, the present Conference stands on the brink, with even chances for failure or success. What we need is statesmanship not brinkmanship. And with us lies the choice for a miserable failure or a glorious success. I have chosen to portray the present situation clean-cut and crystal clear, because this is exactly where the Conference stands.

For our part, our choice goes for success; and to this end, we pledge, as I stated at the beginning, our support from our heart of hearts.