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Eleventh Meeting

Thursday, 31 March 1960, at 3 p.m.

Sr. CHACON PAZOS (Guatemala): Sr. Presidente, permítame que sume mi felicitación a las que ha recibido por la elección al puesto que está desempeñando tan acertadamente, felicitación que hago extensiva a los otros distinguidos miembros de la Mesa de la Comisión.

La delegación de Guatemala concurre a esta segunda Conferencia inspirada en los más altos propósitos de cooperación internacional y convencida de la urgente necesidad de completar la codificación del derecho del mar mediante el establecimiento de normas contractuales universales sobre la anchura del mar territorial y los límites de las pesquerías. El éxito de la Conferencia de 1958 y el magnífico conjunto de instrumentos en ella aprobados así como el hecho de haber podido celebrarse la presente reunión a sólo dos años de aquélla, constituyen un buen augurio para los trabajos de esta Conferencia.

El debate exhaustivo que tuvo lugar en 1958 sobre los dos importantes puntos de nuestro temario nos eximen ahora, en gran parte, de entrar en detalles y consideraciones de índole histórica y jurídica que son suficientemente conocidos y que sería innecesario repetir. Es indispensable, sin embargo, proceder en esta oportunidad a un nuevo examen y replanteamiento de esas importantes cuestiones para explorar la posibilidad de encontrar un campo común de entendimiento.

La anchura del mar territorial ha sido objeto, en los últimos tiempos, de medidas de carácter unilateral introduciendo cierta anarquía en campos que, por su naturaleza misma, deben regirse por normas uniformes de derecho internacional. Creemos que todos los Estados participan de la convicción de que es necesario unificar criterios y establecer normas comunes en esta materia. A nadie escapa la conveniencia de fijar una delimitación justa de la anchura del mar territorial, que al mismo tiempo que salvaguarde los derechos e intereses soberanos de cada Estado, mantenga y facilite la libertad del mar y las comunicaciones marítimas y aéreas en todo el mundo, para consolidar el desarrollo económico y comercial y cooperar mejor a la convivencia pacífica de todas las naciones.

Para lograr este objetivo, sin embargo, es preciso que todos los Estados revisen sus posiciones particulares y que, en beneficio de un bien común, pongan toda su buena voluntad en la búsqueda de una fórmula que, con algún sacrificio de parte de cada uno, pueda lograr la aceptación de todos.

Todas las posiciones que se plantearon en 1958 y las nuevas que pudieran surgir en la presente Conferencia son altamente respetables e indudablemente están basadas en excelente argumentación y en la defensa de muy justificados intereses. Pero para lograr una norma contractual de aceptación y aplicación generales se hace indispensable llegar, en términos de transacción, a una fórmula capaz de ser aprobada con dignidad por todos los Estados.

Estamos convencidos, conscientes de nuestro propio caso, de que la tarea impuesta no es fácil. Sabemos que la opinión pública de nuestros países nunca ve con simpatía soluciones internacionales que pudieran considerarse como restricciones o limitaciones a derechos e intereses regulados por la ley nacional, o a situaciones preexistentes que pudieran estimarse más favorables.

El establecimiento de una norma de derecho internacional en relación con la anchura del mar territorial es, sin embargo, de tanta importancia que bien vale la pena hacer cualquier esfuerzo por cimentarla aun cuando para ello sea preciso introducir alguna modificación en la situación particular de cada país.

Estamos seguros de que la presencia de casi todas las naciones del mundo en esta Conferencia significa que en todas ellas existe un ánimo conciliatorio y optimista para alcanzar, como resultado, un acuerdo feliz que complete el excelente trabajo de legislación sobre el mar de 1958 mediante la fijación del mar territorial y el límite de las pesquerías, con lo cual se tendría, por primera vez en la historia de la humanidad, una codificación completa y operante sobre esta importante materia del derecho internacional.

El fracaso de esta segunda Conferencia perpetuaría por mucho tiempo la situación actual de confusión que, sin duda, habría de agravarse progresivamente en detrimento de la armonía y comprensión entre los pueblos.

Guatemala, por razones de su legislación interna y por su posición tradicional en esta materia, se encuentra colocada entre los países que postulan una anchura de doce millas para el mar territorial. Esta posición, sin embargo, no es inflexible ni intransigente. En el deseo de cooperar en una conciliación de intereses que ponga término a la situación actual, un tanto anárquica, y siempre que se hallare un campo común de entendimiento estaría dispuesta a apoyar cualquier proposición transaccional que conciliara los diferentes puntos de vista y que contara con la aceptación general, en el entendido de que no habrían de modificarse, ni explícita ni implícitamente, las normas ya aceptadas en la Convención sobre Mar Territorial y Zona Contigua de 1958 1/.

Vemos con simpatía la idea de establecer una zona contigua para pesca exclusiva en favor del Estado ribereño, porque consideramos que los recursos vivos del mar adyacente son patrimonio económico de los pueblos que viven en la ribera más cercana, y que el aprovechamiento adecuado de esos recursos constituye elemento importantísimo para mejorar la dieta y elevar el nivel de vida de los países, principalmente de los menos desarrollados. Y no estimamos que sea motivo para privar de esos recursos a algunos pueblos el hecho de que no hayan podido explotarlos metódicamente y en gran escala hasta el presente, porque, por desgracia, esa circunstancia en muchos casos se debe precisamente al bajo nivel de su desarrollo económico y a la imposibilidad en que han estado de crear las empresas y accesorios indispensables para ello.

1/ Documentos oficiales de la Conferencia de las Naciones Unidas sobre el Derecho del Mar, vol. II, anexos, documento A/CONF.13/L.52.

Creemos que las normas de derecho internacional que han de crearse en esta Conferencia, tanto sobre la anchura del mar territorial como sobre el límite de las pesquerías, deberán constituir principios aplicables por igual a todos los Estados, y no basarse en una consideración casuística, puesto que, en este caso, podría resultarse legislando para los casos de excepción más bien que para la generalidad.

Estimamos asimismo que para la solución de ciertos problemas en materia de pesquerías, que no conciernen por igual a todas las naciones, sería más conveniente buscarles soluciones específicas mediante convenios regionales o bilaterales, en los cuales pudiera darse consideración adecuada a los complicados y diferentes aspectos de cada caso concreto.

Ahora bien, mientras no se convenga en una norma expresa de derecho internacional sobre estas materias, la República de Guatemala se reserva el derecho de mantener su legislación vigente de doce millas de mar territorial.

La delegación de Guatemala confía en que la buena voluntad y el espíritu de conciliación de todos los Estados aquí representados y la habilidad de sus distinguidas delegaciones habrán de conjugarse para el éxito de la Conferencia y para el logro de la fórmula que haya de satisfacer las distintas posiciones.

Antes de terminar, y sin ningún ánimo de hostilidad ni de polémica, me veo en la necesidad de señalar la inconformidad del Gobierno de Guatemala ante el hecho de que en el documento oficial de la Conferencia A/CONF.19/4, figure entre las pertenencias del Reino Unido, y bajo el nombre de "British Honduras", el territorio guatemalteco de Belice. Mi delegación hace una reserva al respecto y solicita que de esta inconformidad y reserva quede constancia en el acta de la presente sesión.

Mr. Gudmundur I. GUDMUNDSSON (Iceland): Mr. Chairman, I want to begin my statement by extending the congratulations of my delegation to you and the other members of the bureau upon your election to your respective offices, which you have so richly deserved.

More than ten years have elapsed since the General Assembly of the United Nations decided to make an effort to clarify and develop the Law of the Sea. It was the General Assembly session of 1949 which entrusted the International Law Commission with the tremendous task of studying not only the regime of the high seas but also the regime of the territorial sea - in other words, the Law of the Sea as a whole. 2/ It will perhaps be recalled that this approach was proposed by the Icelandic delegation at the 1949 session of the Assembly, 3/ and we, together with many other delegations in later years, successfully resisted various attempts to disrupt this approach when it was proposed to take certain segments of the problem for separate treatment and decision.

My Government had sincerely hoped that this ten-year old endeavour on the part of the United Nations would be crowned with success at the Geneva Conference on the Law of the Sea in 1958. I hasten to add that, of course, that Conference was a great success in the sense that it found a solution to a great many of the problems concerning the law of the sea. But, as we all know, the foundation for that admirable structure is still missing, namely, the answer to the question of the extent of coastal jurisdiction. Without that answer, the structure which was put together at the last conference is, as it were, still hanging in the air - and indeed the almost total absence of ratifications of the Conventions speaks for itself in this respect. This we all know, and that is why we are here - to try to find an answer to this fundamental problem of the extent of coastal jurisdiction, both as regards the territorial sea and the jurisdiction over fisheries. Indeed it is our only task.

I think it would be a waste of time if I were to go into a historical description of the doctrine and practices in this field because all the delegations here are familiar with the subject. Besides, what we need here is constructive statesmanship applicable to our own time and age rather than the theories of the scholars of the past who had to face entirely different problems. As was quite rightly pointed out by a previous speaker, the writing of the law in this field has been placed in the hands of this Conference.

2/ General Assembly resolution 374 (IV) of 6 December 1949.

3/ Official Records of the General Assembly, Fourth Session, Sixth Committee 163rd meeting, para. 19, document A/C.6/L.37.

At this stage I only want to state as briefly as I can, the position of my Government on the issues involved.

The views of the Icelandic Government concerning the extent of coastal jurisdiction have been explained on various occasions. They were submitted to the International Law Commission several times and also, repeatedly, to the Sixth Committee of the General Assembly. I think it is fair to say that they have by now become well known and, what is more, they have met with great understanding throughout the world. This goodwill has been a source of strength to the Icelandic people, and they are profoundly grateful for it.

Having said this, I would now like to summarize the main points involved in the question of coastal jurisdiction, as viewed by the Government of Iceland.

The first point is that although, of course, the concept of the freedom of the seas constitutes one of the cornerstones of international law, a reasonable delimitation of the extent of coastal jurisdiction cannot justly be said to interfere with the freedom of the seas. International law for centuries ha- recognized that the coastal State is entitled to the exercise of sovereignty or special jurisdiction in its coastal waters - and nobody has ever argued that the freedom of the seas should extend to the pebbles on the shore. On the contrary, international law quite clearly recognizes the two concepts - that is, on the one hand, that over its coastal waters the coastal State exercises jurisdiction and that, to the vast area of what properly should be called the real high seas, the concept of the freedom of the seas should apply and does apply. These two concepts - the concept of coastal jurisdiction and the concept of the freedom of the seas - are, therefore, clearly parallel concepts of equal value. Consequently, neither can be advanced as an argument for unduly limiting the other. The problem is where to draw the dividing line, and that obviously is the problem before this Conference.

The second point is that my Government considers that, as far as coastal jurisdiction is concerned, a distinction should be made between the territorial sea and fisheries jurisdiction. This is the basis of our own legislation in this field. The concept of the territorial sea implies sovereignty in all respects which, in our opinion, might, in view of the freedom of the seas and international air traffic, be limited to a relatively narrow area. Further jurisdiction is, however, required to safeguard fishing interests, but there is, in our opinion, no reason why the territorial sea should be extended for that purpose. The obvious remedy is to exercise adequate coastal jurisdiction over the fisheries. That, we think, is the realistic approach.

Coming now, thirdly, to the question of the extent of coastal jurisdiction over fisheries, I would say that, in the past, there have been two fundamentally different approaches to the problem of the extent of coastal jurisdiction over fisheries. On the one hand, some States which wanted to safeguard the right of their nationals to engage in fishing as close as possible to the shores of other nations have maintained that the coastal jurisdiction should be very limited. This they have sometimes done at the risk of having their own coastal fisheries ruined, but in balancing the interests involved, they have found it to be more advantageous to themselves to pursue this policy.

It is, of course, only too well known that this policy for a long time was strictly enforced by some of the great naval Powers. In recent times, however, when the serious problem of overfishing has become more and more acute, the coastal States, which were primarily concerned about the threatened depletion of their coastal fishery resources, objected to this policy. The standard reply was that they had nothing to worry about. The proper remedy would be for all nations concerned to agree upon proper conservation measures equally applicable to all, and then all could live happily ever after.

This simply is not so. In the first place, it has always been admitted that in a certain area surrounding its coast, regardless of whether that area is called the territorial sea or a fishing zone, the coastal State is and always has been entitled to exclusive jurisdiction over its fisheries. The question is how far from the coast that right should extend.

With the intensity of modern fishing it has become increasingly evident that conservation measures ensuring the maximum sustainable yield do not solve the problems of the coastal State, for the reason that the maximum sustainable yield may not be and frequently is not adequate to satisfy the demands of all those who are fishing in a given coastal area.

Let us take Iceland as an example and let us face this problem in realistic terms. It might, from a purely conservation point of view, be found at a certain time to be necessary to reduce the then existing catch in Icelandic waters by, let us say, 25 per cent. In this connexion it is important to note the effect of such a reduction if it were to apply equally to the nationals of all countries which are fishing in those waters.

To the other countries fishing in the area the fisheries are of minor importance to their national economies and such a reduction in their catches in Icelandic waters would hardly be felt at all. To Iceland, where the fisheries form the very basis of the economy and constitute almost the total exports, the impact of such a reduction would be nothing less than disastrous. Clearly, therefore, conservation measures equally applicable to all would not solve the problem.

It is on the basis of these considerations that the priority position of the coastal State is becoming widely recognized and that recognition has definitely led to the downfall of the so-called three-mile limit. Instead, another criterion has won increasing favour, namely, that the extent of coastal jurisdiction over fisheries should be determined in a reasonable manner in view of relevant local considerations.

In applying this criterion, a great number of States have found that a distance of twelve miles from appropriate base lines would meet their requirements in this respect. More than twenty-five States have already adopted the twelve-mile limit in their own legislation and the first Geneva Conference on the Law of the Sea clearly showed that this distance is favoured by a far greater number, indeed, by a substantial majority.

The Icelandic Government feels very strongly that the Canadian proposal[4/] for a twelve-mile fisheries jurisdiction represents a thoroughly realistic approach to the solution of this important problem and, therefore, supports it wholeheartedly in principle.

On the other hand, the Icelandic Government finds it not only unrealistic but also unjust that exceptions to this principle should be made in favour of those who have been fishing in a given area for a more or less extended period of time. The fact of the matter is that in many cases such fishing activities have been instrumental in bringing about harmful effects on the fishstocks, and indeed sometimes have led to depletion. In our own case such activities have been carried out for much too long already. For this reason the Icelandic delegation at the last Conference was against the formula which has come to be called the "six plus six minus six" formula - which after all only leaves you with six, because presumably it would apply to all those and only those who are interested in fishing in the particular coastal area in question. I am not going to repeat the arguments which so eloquently were adduced against the recognition of the so-called "historic rights" by the leader of the Canadian delegation the other day. But I do want to say that we found his arguments very striking and completely true. As far as my country is concerned, I would say that we consider such claims to so-called "historic rights" to be at least parallel, if not identical, with "colonial rights" - a concept which, fortunately, is becoming ever more obsolete, as indeed it should be.

It has been proposed that such rights should be limited in a way which is intended to ensure that the total catch of the nationals of other nations in the outer six-mile area would not exceed their catch in previous years. With due respect, I venture to draw attention to the fact that statistics showing catch in the area between six and twelve miles are practically non-existent. One or two nations have now initiated a system of that kind, but to use that as a basis for a rule is, in my view, completely illusory. Fisheries statistics always show the catch in a given country area - for instance, in the Icelandic area. Nothing is then said about any particular distance from the coast. In addition, who is going to control these activities? Would it not be a great temptation for a trawler skipper to maintain, when the total quota has been reached, that his catch came from an area outside the twelve miles? Be that as it may, as far as my delegation is concerned, we do not recognize such rights.

Although we are therefore opposed to the United States proposal,[5/] we noted that, in the closing remarks of the leader of the United States delegation the other day, he said that the United States proposal did not attempt to deal with exceptional situations in which the economy of a State is overwhelmingly dependent on its coastal fisheries and that his delegation was prepared to discuss with other delegations the matter of special treatment in that connexion.

4/ Official Records of the Second United Nations Conference on the Law of the Sea, annexes, document A/CONF.19/C.1/L.4.

5/ Ibid., document A/CONF.19/C.1/L.3.

The special problem referred to is understood by a great number of nations, as was evident at the last Conference, as well as now, and my delegation appreciates the growing support which our case enjoys. It is quite clear that the reference to exceptional cases could not apply to any other country to the extent that it does to Iceland.

At our last Conference my delegation drew attention to the fact that there are special cases where the local population is overwhelmingly dependent upon the coastal fisheries for its livelihood. We maintained then, as we do now, that in such exceptional cases special rules are called for beyond the general formula of, say, twelve miles. Although the merits of the Icelandic case, in terms of special consideration, are well known and recognized in most quarters, I would summarize the principal facts involved as briefly as I can.

As far as the Icelandic people are concerned, the fundamental consideration, of course, is that they have always had to depend upon coastal fisheries for their survival. No mineral resources or forests exist in the country itself and agriculture is limited to sheep-raising and dairy-farming, hardly sufficient to satisfy the local demand. Most necessities of life have to be imported and, in turn, financed by our exports, up to 97 per cent of which consist of fishery products. It is as if Providence had intended to compensate for the barrenness of the country itself by surrounding it with fishing grounds. I do not think that further elaboration would add anything to this very clear story.

The overfishing of some important fish stocks in Icelandic waters was an established scientific fact long before World War II. This overfishing could clearly be demonstrated by the steady decrease in the catch per unit of effort. The famous British fishery scientist, E.S. Russell, even considered the stocks of haddock, plaice and halibut in Icelandic waters as classical examples of overfished populations. The decline in the fishstocks usually followed the same general pattern as the decrease of the stocks between the two world wars when the total catch of haddock and plaice in this area was reduced by about 80 per cent - not 18 per cent, but 80 per cent. A comparatively few years ago we were indeed faced with rapid ruin.

Such a development becomes a matter of life or death to a people when its coastal fisheries constitute not only the foundation, but the very structure of the country's economy. It is not too much to say that without the coastal fisheries Iceland would not be habitable.

In this connexion it is of interest to note that the protection of fishstocks in Icelandic waters was quite adequate in former times, but was disastrously reduced at the very time when it was most needed. Thus, in the seventeenth, eighteenth and part of the nineteenth centuries, the fishery limits were four leagues - a league being at first the equivalent of eight miles, later of six, and finally four. In other words, the limits were, at the beginning of the period, thirty-two miles, later became twenty-four miles and, in the nineteenth century, had been reduced to sixteen miles. During the latter part of the nineteenth century a four-mile limit seems to have been practised by the Danish authorities, who at that time handled Icelandic affairs, in a manner which amounted to inefficient administration of the laws in force, but all bays were closed to

foreign fishing during the entire period. Finally, in 1901, an agreement 6/ was made by Denmark with the United Kingdom, providing for a ten-mile rule in bays and three-mile fishery limits around Iceland. This agreement was terminated by Iceland in 1951, in accordance with the terms of the agreement. At that time the approaching ruin because of overfishing was quite clear, and the Overfishing Conventions of 1937 7/ and 1946 8/ did not offer much assistance in counteracting that ominous development.

The Icelandic Government could not, of course, sit idly by and watch this unfortunate development and, therefore, in 1937 it proposed the closure of Faxa Bay, one of the most important nursery grounds in the North Atlantic. The matter was handed over to the International Council for the Exploration of the Sea, which found the scientific evidence strong enough to propose an international experiment for the closure of Faxa Bay to all kinds of trawling for a certain number of years to study the effect on the stocks of fish elsewhere around Iceland.

On the basis of these scientific recommendations we tried to convene a conference among the interested nations in order to get agreement on this experiment. The conference had to be cancelled because the United Kingdom, by far the most important foreign country fishing in the area, did not wish to attend.

It thus became clear that the Icelandic problem would not be solved by international agreement, at least at that stage, and, therefore, Iceland was forced to resort to unilateral measures.

The Icelandic Parliament, as far back as 1948, had authorized the Ministry of Fisheries to establish explicitly bounded zones within the limits of the continental shelf of Iceland, where all fishing should be subject to Icelandic jurisdiction and control, and to issue the necessary regulations in this connexion. It was considered natural to base the regulations on the continental shelf, the outlines of which roughly follow those of the coast itself. A topographic chart makes it clear that the shelf is really the platform of the country itself. On these shallow banks are to be found some of the world's most valuable spawning grounds and nursery areas which provide the basis for the great off-shore fisheries in Iceland.

The implementation of this legislation, briefly speaking, has been the following.

In 1950 and 1952 straight baselines were drawn around the coast and fishery limits of four miles were determined. This step was essential because, in this manner, invaluable nursery grounds and spawning areas were protected. The United Kingdom Government then maintained that these measures were illegal and would

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6/ Convention for Regulating the Fisheries Outside Territorial Waters in the Ocean Surrounding the Faroë Islands and Iceland, signed at London, 24 June 1901: British and Foreign State Papers, 1899-1900, vol. 92, p. 1057.

7/ Convention on the Regulation of Meshes of Fishing Nets and Size Limits of Fish, 23 March 1937. Br. Parl. Papers, Misc. No. 5 (1937), Cmd. 5494; Hudson, International Legislation, vol. VII, p. 642.

8/ Convention on the Regulation of Meshes of Fishing Nets and Size Limits of Fish, signed at London, 5 April 1946, Br. Parl. Papers, Misc. No. 7 (1946) Cmd. 6791.

greatly diminish the catch of the British trawlers in Icelandic waters. It later became quite clear that this fear was without foundation since the decline in catch in the Icelandic area was halted and an upward trend was started. I think it is fair to say that the United Kingdom would agree that after these measures were taken their catch not only did not diminish but was considerably increased.

It soon became clear, however, that the measures taken in 1952 were not sufficient. Since the problem of the law of the sea was being dealt with in the United Nations, it was considered preferable to wait for a solution there. That solution was expected in the General Assembly, for instance, in 1956. Then it was expected at the first Geneva Conference in 1958. When that hope did not materialize, the Icelandic delegation at that Conference stated that no further waiting was possible and, on 1 September 1958, new regulations were issued, providing for a twelve-mile fishery limit around Iceland. We had then waited for a solution for ten years and nobody knew whether another conference would have any success in this field.

There is not the slightest doubt in the mind of the Icelandic Government that the regulations at present in force are not contrary to international law. The base-lines used had already been drawn in 1950 and in 1952, that is, long before the first Geneva Conference. A study of article 4 of the Convention on the Territorial Sea, 9/ adopted at that Conference, shows that some of the base-lines could be further extended in accordance with that article.

As far as the twelve-mile limit itself is concerned, even as a general rule, it would be quite legal, in view of State practice today as it mirrors the present state of international law. For, in the absence of a binding agreement, international law must be looked for in the views of the international community as expressed by the various States.

Nevertheless, our twelve-mile limit has been challenged by a few countries which have been fishing in our waters. With one exception, these countries have not gone further than protesting against our twelve-mile fishery limit through diplomatic channels and their fishing vessels, subject to that reservation, have respected our laws.

Only one country has proceeded in a different manner. When all the trawlers of other nations went outside the twelve-mile limit the United Kingdom Government proceeded to prevent the enforcement of our twelve-mile fishery limit by sending naval vessels inside the limits for the protection of British trawlers fishing there. This protection has taken the form that the naval vessels have even threatened to sink the Icelandic patrol vessels if they endeavoured to arrest the trawlers.

As has been pointed out on various occasions by the Icelandic Government, no other State has used such tactics against any nation. The United Kingdom has not resorted to them against any other of the more than twenty-five States that have adopted the twelve-mile limit, but only against the Icelandic people, who are completely dependent upon fisheries for their livelihood.

9/ Official records of the United Nations Conference on the Law of the Sea, vol. II, annexes, document A/CONF.13/L.52.

The Government of Iceland has protested repeatedly to the United Kingdom Government against this practice and demanded that the warships be withdrawn immediately from Icelandic waters. The reply usually has been that the twelve-mile limit constituted a violation of international law on the part of Iceland and that it should not have been adopted unilaterally. Apart from the fact that the United Kingdom Government clearly was not willing to give its consent to the twelve-mile limit in the form of an agreement, it is a matter of record that more than twenty-five States have already adopted this limit, and in all cases unilaterally. Surely it would be idle to maintain that they have all violated international law.

The Royal Navy has now been withdrawn from our waters - at least for the duration of this Conference. I am not going to dwell upon this particular situation any further because this Conference is not the proper forum in which to argue about past events, but rather to find solutions for the future.

The fears expressed by some foreign trawler owners in 1952 to the effect that their catch would decrease because our limits were extended to four miles proved to be quite unjustified. The protection of the young fish proved to be worthwhile for all concerned. The same would apply to the twelve-mile limit and, as somebody observed once, fish can swim, you know, and can be caught even outside the twelve miles.

The view of the Icelandic Government, as I have already stated, is that, as a general rule, the twelve-mile fishery limit should be supported. But it is also our view that, in addition, a special rule is required to take care of the requirements of exceptional cases where the local population is overwhelmingly dependent on its coastal fisheries for its livelihood.

That special rule would, of course, have to be formulated in such a way that abuse would not be possible. The Icelandic delegation to the first Law of the Sea Conference did in fact submit a formula for this purpose which received very substantial support. 10/ At this Conference we shall introduce a similar proposal. 11/

In this connexion, I wish to emphasize the fact that although it has been maintained that this special problem is adequately dealt with in the resolution on special situations, 12/ adopted at the first Conference, there is a fundamental loophole in that resolution, namely, that, under its terms, all measures to be taken are subject to the approval and consent of those very States which are fishing in the area concerned and, therefore, are not likely to be eager to accept a priority position for the coastal State in that area.

10/ Ibid., vol. III, annexes, document A/CONF.13/C.1/L.131.

11/ Official Records of the Second United Nations Conference on the Law of the Sea, annexes, document A/CONF.19/C.1/L.7 and Rev.1.

12/ Official Records of the United Nations Conference on the Law of the Sea, vol. II, document A/CONF.13/L.56, resolution VI.

In such a case the resolution would only amount to so many words on paper. That is why my delegation will submit further proposals dealing with this matter, which would at least supplement the resolution, if not be a substitute for it.

These are the fundamental views of my Government and, with your permission, Mr. Chairman, I would conclude by repeating the main points.

First: the concepts of the freedom of the seas and of coastal jurisdiction are parallel concepts and neither can be advanced as an argument for unduly limiting the other.

Secondly: a clear distinction should be made between the territorial sea and fisheries jurisdiction.

Thirdly: a narrow territorial sea is acceptable to Iceland provided, and only provided, that the fisheries jurisdiction is adequately dealt with.

Fourthly: as a general rule, fisheries jurisdiction may extend to twelve miles.

Fifthly: in exceptional circumstances, where the local population is overwhelmingly dependent upon its coastal resources for its livelihood, coastal jurisdiction over fisheries may be more extensive, but a rule to this effect should be so formulated as to prevent abuse.

My delegation wishes to use this opportunity to appeal to all our friends at this Conference to consider these points with understanding and to do their utmost to support them.

I have no further remarks at this stage.

Sir Kenneth BAILEY (Australia): The delegation of Australia had an opportunity at the commencement of the Conference to pay a tribute to the Chairman of the Committee and it takes this opportunity now to associate itself cordially with the tributes that have been paid by other speakers in this debate to the learning and ability which perhaps compelled the election of the Vice-Chairman and the Rapporteur, the learned Professors, the representatives of Denmark and of Romania.

The task of this Conference is to define, by agreement, the limits of no less than three of the historic freedoms which together make up the great and precious concept of the freedom of the sea. I refer, of course, to the freedom of navigation, the freedom of fishing, and the freedom of flight over the high seas.

All these freedoms all States, both coastal and non-coastal, have in common. They exist in their entirety in respect of the high seas - the whole of the high seas. In the territorial sea of coastal States they are either qualified and regulated, or non-existent except by agreement with the coastal State. Hence our terms of reference - the breadth of the territorial sea and fishery limits - necessarily involve a decision on the limits of each of these three freedoms.

The proposals which are at present before this Conference all have the effect of limiting, to a greater or less degree, the existing scope of each of the three freedoms. All four proposals have the effect of extending the limits of the territorial sea and of vesting in the coastal State, in a contiguous zone extending beyond the territorial sea, rights which it does not at present have under the customary law of nations. The necessary result, therefore, of all four proposals is to curtail the rights hitherto enjoyed by all States in common in the coastal waters of any State, and conversely to extend the rights hitherto enjoyed by the coastal States in those same waters. Some proposals do this more than others. But all do it.

The first United Nations Conference on the Law of the Sea witnessed, and in its conventions registered, increasing recognition of a need to accord to a costal State rights more ample in its coastal waters than international law had previously recognized. Australia has no desire to stand aloof from this recognition of the needs of coastal States. Indeed, like most though strictly not all of the States represented here, Australia itself, as a coastal State, shares those needs. Nevertheless it seems to us to have been common ground, here in Geneva in 1958, that increased rights are to be accorded to the coastal State within the general framework of the freedom of the high seas; that this great concept must still be maintained in the common interest of mankind, and that curtailments or modifications of it should be made only to such extent as is generally agreed to be necessary.

It is in the light of these broad principles that the delegation of Australia approaches the task of this Conference, and the choice between the proposals that have been submitted. Under the Charter of the United Nations, the whole trend today is to multiply the links that join Member States together, and to enlarge the area of the concerns that they have in common. Australia would think it a tragedy if, against this wise and beneficial trend, the present Conference were to increase the areas of exclusive national sovereignty in such a manner and to such an extent as would substantially and seriously impair the freedom of the sea and the rights that are enjoyed by all.

The four proposals so far before us all have one element in common - they all propose to give to the coastal State greater rights in respect of fishing, and to curtail pro tanto the rights hitherto enjoyed by other States, in a contiguous zone extending twelve miles to seaward of the baselines from which the breadth of the territorial sea is measured. The Mexican proposal 13/ would provide in some circumstances for an even wider zone. The United States proposal 14/ would limit, but would allow to continue in limited form, the rights which other States have actually exercised in the outer part of the contiguous zone off any coast. All the other proposals - the Soviet Union, 15/ the Mexican and the Canadian 16/ - would

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13/ Official Records of the Second United Nations Conference on the Law of the Sea, annexes, document A/CONF.19/C.1/L.2.

14/ Ibid., document A/CONF.19/C.1/L.3.

15/ Ibid., document A/CONF.19/C.1/L.4.

16/ Ibid., document A/CONF.19/C.1/L.1.

entirely abrogate the right of another State to fish in this zone of the high seas. But of course under each of those proposals the coastal State could subsequently, in the exercise of rights which all these proposals would make exclusive, permit the continuance, or the new exercise, of fishing rights by other States to any extent that the coastal State itself thought fit and proper, or could be persuaded to concede.

Australia makes clear its own position in this regard. Its vessels have not fished in the coastal waters of other States, so that it has no distant-waters-fishing to protect. Conversely, other States have not to any substantial degree exercised fishing rights in the contiguous zone off Australia's coasts, so that there are no foreign fishing activities that Australia wishes to exclude. Accordingly, from the point of view of its own distinct national interest, Australia stands in a position of complete impartiality on the question whether provision for the continuance of distant-waters-fishing by foreign States should be made in a convention, as the United States proposal envisages, or whether the position of foreign fishing should be dealt with later, either bilaterally or multilaterally and apart altogether from any general convention, as the Canadian proposal contemplates.

The question as we see it, then, is to find the most just and equitable arrangement. As between two of the proposals that are before the Conference, namely the United States and the Canadian, Australia prefers that of the United States as representing the fairest possible adjustment, in the circumstances, of the claims and desires of coastal, distant-waters-fishing and other States.

The United States proposal would continue, though restricted to past fishing levels, the activities of distant-waters-fishing States. Subject only to this continuance, the fishing rights of the coastal State in the outer six-mile zone would at once become exclusive. The coastal State would thus be protected immediately against newcomers from other foreign States. But unless some special bilateral arrangement were made, it would have to live with foreign fishing at the average former level.

There seems to the delegation of Australia to be some confusion as to the juridical nature of the rights thus continued. They have sometimes been referred to as "historic rights", or as involving a kind of prescription. These analogies seem to us to be quite misplaced. Under the general law of nations as it now stands, all States may fish, as of right, in this specified zone of the high seas - the coastal State and foreign States alike. There can be no question of prescription, for prescription is a process by which an unlawful occupancy acquires legal validity by long continuance. But here the existing activities have been and are, by definition, perfectly lawful. Likewise, the concept of "historic rights" is employed to validate, as the representative of the Philippines said, a claim which operates as an exception to the general rule of law. There is no need, or place for such a concept in connexion with the fishing rights that are currently exercised by distant-waters-fishing States. Their present validity does not depend at all on the duration of their exercise.

In this context, the simple question is whether, and how far, it is equitable to expect the distant-waters-fishing State to surrender its rights in this zone of the high seas, in order to allow the rights of the coastal State, and only those rights, to continue.

In considering this matter, the Committee may well remember, as the representative of Cuba pointed out, that the distinction between coastal and distant-waters-fishing States is not at all the same as the distinction between great and small States. There is here no question whatever of colonialism and anti-colonialism. The group of States, in various parts of the world, which have distant-waters-fishing that they feel it important to them to preserve include States that are small, States that are both small and new, States that themselves were colonies not long ago. Indeed some States, in relation to each other, are both coastal States and distant-waters-fishing States.

In those cases where the right to fish in this zone has not in fact been exercised, the non-coastal State can no doubt renounce its rights with at least a measure of equanimity. To take an extreme example, it would represent no sacrifice of substance for Australia to renounce the rights of its vessels to fish, away across the Pacific, off the coasts of, let us say, Ecuador. In cases, again, where a State has fished in distant coastal waters, but only spasmodically and to a minor degree, it would scarcely be inequitable to ask it to renounce for the future a right so little exercised, and to seek bilateral agreement with the coastal State if it desires to operate in that zone in future. Where, on the other hand, a State has carried on distant-waters-fishing for a long time and to a substantial extent, so that its fishing industries have become organized, so to say, around the practice of access to those particular fishing grounds, the justice of the situation seems to us to be quite different. Here the homes and jobs of whole towns and villages, as well as the investment of capital in the appropriate equipment, are all involved, as the representative of the United Kingdom has reminded us. To Australia, it does not seem just to ask such a State to agree, by its own act and consent, to place the future of its distant-waters-fishing industries entirely at the discretion of the coastal State.

In matters of this kind, as so often in the international field, analogies from our own national systems of law can be of assistance. All the four proposals, in seeking to extend the rights of the coastal State in the outer zone, are making a legal provision which is very like what is so often done in our own countries, when cities and towns have to be replanned as they grow, in the light of changing commercial and industrial and residential activities. We all know cases in which what has been an area of multifarious buildings is rezoned for residential purposes only, or perhaps for factories only, or perhaps as a shopping centre. But can we not take the analogy further still? I would think it is invariably the practice to make some special provision, in such cases, as to those who are already carrying on, in the area concerned, activities of a kind which in future are not to be permitted. This point also was well brought out by the representative of the Philippines.

The type of adjustment which is adopted in these cases will of course vary with the circumstances. Sometimes the authority concerned will simply make an exception of those who are already operating in the area, and will content itself with regulating the activities of newcomers in accordance with the over-all plan. Sometimes those already operating in the area will be allowed a sufficient term of years to reorganize their affairs, and establish themselves in some other area. Sometimes existing activities will be terminated forthwith, but subject to fair compensation. Not to make any recognition at all of existing operators really would, I think, universally be regarded as harsh and oppressive.

Here in this Conference, though our task is essentially law-making, we are not a legislative assembly, in the sense familiar in our own domestic laws. We cannot give effect simply to our own personal sense of what is fair and equitable, except to the extent that the States we represent will accord their consent. Unless the proposals we support can obtain the concurrence of at least the necessary minimum number of States, our work cannot produce any international agreement at all. We have to ask not only what terms are just but whether consent to them can be obtained.

For the reasons I have given, the delegation of Australia believes that justice requires some provision to be made for the continuance of well-established distant-waters-fishing, though in all other respects the fishing rights of the coastal State in the outer zone should become exclusive. Australia, standing neither to gain nor to lose whatever particular solution is adopted, and having therefore no interest other than to promote agreement on just terms, has no inflexible or dogmatic view as to the terms which ought to be accepted. There is no automatic arithmetical formula for answering the questions involved. Considerations of history, of politics, of economic needs, and of national sentiment must all be taken into account. In principle there could be other bases of adjustment than the one adopted in the United States proposal. But at this stage it is incumbent on us to define our attitude to the proposals actually before the Conference. The delegation of Australia, as I have said, will for these reasons support the proposal of the United States. 17/

In further comment on that proposal let me add just this. It has seemed to the Government of Australia that the fairest basis of compromise is one in which neither side insists on securing the full measure of its own claims, and yet neither is asked, in the process, to bear too heavy a burden of sacrifice. The United States proposal seems to the Government of Australia fairly to answer that test. This is an era of expansion in the world's fishing industry. At such a time, it is no light thing to ask that distant-waters-fishing States will renounce all right to expand their activities in the distant waters in which their industries are already firmly established. But this is one thing the United States proposal does ask, and require. On the other hand, there may be cases in which it is no light thing to ask the coastal State to continue to meet, in the outer zone, the same competition as it has met in the past from the fleets of distant-waters-fishing States. Yet that again is just what the United States proposal does ask. There are, that is to say, concessions on both sides. If there are cases, either way, in which for one reason or another the limitation asked is too much, there we would think is a proper and legitimate sphere for special bilateral arrangement.

17/ Ibid., document A/CONF.19/C.1/L.3.

There are, it seems to us, a great many States represented in this Conference which, for one reason or another, have not fished in the coastal waters of foreign States. If any one of the four proposals now before the Conference were to be accepted, they would henceforth be unable to do so except by agreement with the coastal State concerned. This is a limitation which the Government of Australia, for the sake of reaching agreement, is willing to accept and hopes that all the other States concerned should likewise be willing. If agreement can also be reached between the much smaller group of States which are concerned as coastal States and distant-waters-fishing States respectively, then other States, which like Australia have no direct national interest in the terms of adjustment, should, or so we think, have no wish to object. It is really a matter between the States directly concerned, and the rest of us should be prepared to fall in with any terms of adjustment of their own specific mutual problem which are acceptable to them.

I turn now to the other branch of the Conference's agenda - the breadth of the territorial sea. On this question the proposals group themselves naturally, two by two. The proposals of the United States and Canada are identical in providing for a maximum breadth of six miles. The proposals of the Soviet Union and of Mexico permit a territorial sea fixed, in the discretion of the coastal State itself, at any point between three and twelve miles.

Reference to the synoptic table 18/ prepared by the Secretariat at the instance of the delegation of Mexico will show that in point of law Australia's own territorial sea was fixed nearly a century ago by a law which still stands formally unchanged. The Government of Australia regards the freedom of navigation as the most valuable of all the historic freedoms of the sea. For itself, Australia would not wish to widen at all the limits of the territorial sea, but expressed its willingness at the first Conference, and is still willing now, to accept a convention fixing six miles as the maximum breadth of the territorial sea.

Australia, as a political entity, comprises a large island, or rather a fairly large number of islands, possessing in all a very long coastline. All Australia's communications with other States therefore take place through, or over, the sea. Australia naturally therefore regards the sea in a perspective in which it is a primary object of policy to secure the maximum freedom of navigation and aviation. But indeed what is true of Australia is true, to more or less the same extent, of probably the great majority of the small and medium-sized States represented at this Conference. Every State which has merchant ships of its own, or an international airline of its own, or whose ports and aerodromes are visited by ships and aircraft from other States, has the same needs. Every extension of the territorial sea reduces the area of the high seas through or over which ships and aircraft may pass without leave or licence and without possibility of interruption; increases the length and cost of journeys; and thus tends to impede communications between States. Details have been given by other speakers during the debate, and I do not intend to repeat them.

18/ Ibid., document A/CONF.19/4.

Notwithstanding these considerations, Australia is willing, as I have said, for the sake of reaching agreement at the Conference, to accept a convention fixing six miles as the maximum breadth of the territorial sea. There is no established mathematical scale in such matters. The question is largely one of degree. The effect of any given extension of the territorial sea can only be assessed in the light of the known current and probable facts of geography and of politics. In the judgement of the Government of Australia, to permit a general maximum of twelve miles would curtail too drastically the freedom of navigation on and flight over the sea. The delegation of Australia cannot therefore support either the Soviet or the Mexican proposal.

It has been said in this debate that, because there is a right of innocent passage through the territorial sea, freedom of communication would not in fact be curtailed by the extension of the territorial sea to twelve miles. Such a contention should be rejected. We all know that on the high seas ships of all nations have an absolute and unqualified right of navigation. In the territorial sea the right of innocent passage is qualified, if only because it may be suspended, in the discretion of the coastal State, if the coastal State deems it essential for its own security. The lawyer will immediately recognize, and recognize as significant - as significant both in a juridical and in a practical sense - the distinction between a right which is absolute and a right which is liable to suspension at the discretion of another. The breadth of the territorial sea cannot be extended without qualifying in this way, pro tanto, the freedom of navigation.

I have so far been referring only to ships, and to passage through the sea. With regard to aircraft and flight over the territorial sea, the position is similar, and quite complex. The basic rule is that there is no right of innocent passage for aircraft over the territorial sea, except by permission of the State concerned. The Committee has been assured by some supporters of a twelve-mile territorial sea that this rule has now no practical effect, because of the provisions of relevant agreements, bilateral and multilateral. But when these provisions are closely examined, the picture is not nearly as attractive. The right to fly over the high seas is absolute. But if the waters below become territorial sea, then at once the right is hedged round at almost every point with qualifications and potential restraints.

Let me illustrate briefly. So far as concerns the Chicago Convention on Civil Aviation 19/ of 1944, aircraft fall into three categories, which are differently dealt with. First, and most numerous, come the aircraft that operate regular scheduled international air services. Second come private aircraft operating unscheduled services - on charter, for example. Third come State aircraft. The latter may not without permission overfly another State's territory, including of course its territorial sea. Charter aircraft are accorded a general right of overflight, but subject always to the right of the overflown State to require landing. Scheduled air services cannot even overfly without permission, and in accordance with the permitted terms. A right of overflight, but subject to important qualifications, has been granted by an ancillary agreement of potentially universal application. But two points should not be forgotten. First a substantial group of States, including some very

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19/ United Nations Treaty Series, vol. 15, p. 296.

important States, are not parties to these agreements at all. Second, it cannot be assumed that even all parties to the Chicago Convention itself will at all times be ready to make reasonably long-term agreements, on reasonable conditions.

In the light of all this, it becomes quite plain that real and practical consequences flow, in respect of overflight, from an extension of the territorial sea.

It is common ground among us that in the present situation - that is to say, in the absence of a general convention - there is no uniformity of practice as to the breadth of the territorial sea. States have made diverse claims. Some of them have achieved a measure of general recognition, others have not. So much I think we all agree. But we are not agreed as to the legal rules which are currently applicable to such a chaotic situation.

Uniformity of State practice is no doubt creative of law. But the present diversity of State practice in this field could not be regarded as creative of law unless it could be said that a State is legally bound to recognize whatever limits - subject perhaps to some maximum - any other State fixes for the breadth of waters adjacent to its coasts. No such rule, in the view of the delegation of Australia, can be deduced from existing practice. Certainly no such rule exists by convention. The great authority of the International Court of Justice is clearly and explicitly against it. The fixing of a State's territorial sea necessarily involves an act on the part of the State itself; but, as the Court has said in the Norwegian Fisheries case, the validity of the limits so fixed has an international aspect as well. 20/ It depends, that is to say, on recognition by other States. The Australian Government believes that international law does not at present require it to recognize whatever limit, up to twelve miles, another State fixes for its territorial sea.

The International Law Commission came to the conclusion, as we have been reminded, that the breadth of the territorial sea could only be fixed at an international conference, and by a convention. 21/

In this regard, what the International Law Commission said has been frequently referred to already in the course of our debates - and sometimes most incorrectly. The Commission's statement under the heading of "article 3" in the draft articles leaves something to inference or implication. But some of the inferences which we ourselves have been invited here to drew are specifically and categorically excluded by the paragraphs that follow in the Commission's own commentary. We have for example been told that the Commission recognized that every State has the right to extend its territorial sea up to twelve miles. The fact is exactly the opposite, for the Commission records in paragraph 6 of its commentary to Article 3 that such a proposition was in fact put to the vote and rejected.

20/ I.C.J. Reports, 1951, p. 132.

21/ Official Records of the General Assembly, Eleventh Session, Supplement No. 9, para. 33, Article 3.4.

The truth is that no majority could be found in the Commission for any affirmative fixed rule as to the breadth of the territorial sea. Guidance from the Commission on this point would indeed have been most welcome. But in truth none is to be got. The position was fully explained at the 1958 Conference by Professor François, 22/ in the passage which was quoted here by the representative of the United States. The Commission found itself, to its own regret, and ours, unable to take any affirmative decision on the question. It thought the matter would have to be settled by an international conference. There is in English a vernacular expression which sums up such a position perfectly, if rather inelegantly. It consists of the three words - "over to you".

Let me in conclusion summarize the Australian position. The Government of Australia is opposed to an extension of the territorial sea to twelve miles. It is prepared to support the extension of the territorial sea to six miles, with provision for a contiguous fishing zone of a further six miles. The Australian Government considers that it is reasonable to make within this outer fishing zone some provision for the continuance of the established rights of foreign fishing States, though it has no inflexible views as to the exact nature and extent of the provision to be made.

Of the proposals at present before the Conference, that of the United States is the only one which meets all these stipulations. The delegation of Australia will therefore support that proposal. We share the general and earnest hope that agreement can be reached and will do our utmost to promote it.

Sir Gerald FITZMAURICE (United Kingdom of Great Britain and Northern Ireland): I shall make only a very brief statement, and I do apologize to you, Mr. President, and to my colleagues for, as it were, interrupting the work of the meeting by referring to something which really has nothing at all to do with the work of our Conference, namely, the remarks concerning British Honduras which were made earlier this afternoon by the representative of Guatemala. But in making this intervention I should like to emulate the moderation and restraint which was exhibited by the representative of Guatemala. He simply reserved the position of his Government, and, in the same spirit, I should like to reserve the position of my Government on that subject.

As I have the floor, may I be permitted to draw attention to the fact that in the statement made by the representative of Iceland there were a number of remarks specifically directed to the action of the United Kingdom Government. At a later stage of the debate, we would be grateful if you would give us the opportunity of making some reply on those particular observations.

22/ Official Records of the United Nations Conference on the Law of the Sea, vol. III, 21st meeting, annex.

Mr. GUNDERSEN (Norway): First, I want to pay my respects - and those of my delegation - to the members of the Committee's Bureau, the Chairman, Ambassador Correa, the Vice-Chairman and the Rapporteur, my two adjoining friends, Professor Sorensen and Professor Glaser. I offer them my sincere congratulations on their being elected to these important posts, and I wish them all success in their work.

My country is one of those which has a particularly important stake in the deliberations in which this international conference is engaged. As far back as we can trace our history the Norwegian people have depended heavily on its manifold and far-flung activities on the sea. The geographical and climatic conditions in Norway have forced us to seek our livelihood to a very great extent on the sea, to fish, to trade and to offer to other peoples our services as freight-carriers all over the world. Our history has also confronted us with the problems created by a long and exposed coastline, both in war and in peace. Our coastline is one of the longest in Europe and the majority of our population is living along the seaboard. All the problems we had before us at the 1958 Conference and those we are dealing with now, are in my country felt to be near and concrete questions concerning the everyday life of most of us. No wonder therefore that we were distressed about the failure of the first Geneva Conference to solve the crucial questions of the breadth of the territorial sea and of the fishing limits. A continuation of the legal uncertainty in this extremely important field will in the long run be especially detrimental to the interests of small States which - as we see it - depend even more than others on the rules of international law for the protection of their vital interests.

Mr. Chairman, I shall not try to present anew all the considerations which determine the general thinking of the Norwegian Government in this matter. I agree with some of the preceding speakers that this conference should be considered as a continuation of the 1958 Conference and that we should not use too much time repeating arguments which are already well known. I shall therefore confine myself, in the first place, to the statement of a few general propositions which, in my opinion, must be kept in mind if we are to carry these final negotiations to a successful conclusion. In the second place I shall try to explain briefly the main considerations which in the view of my delegation should be given due weight when we are to choose between the proposals now tabled before this Committee.

Although we failed at the first Geneva Conference to solve the controversial questions of the breadth of the territorial sea and the fishing limits, we did manage to narrow down the margin of disagreement very considerably, and during the final phases of the conference that margin only concerned the zone between the six- and twelve-mile limits.

In our opinion it is of the utmost importance for the success of this conference that we should take this preliminary achievement as our point of departure. It seems to us that if we are to find a compromise at all, we must search for it within this narrow compass.

The first conference made it clear beyond doubt that it would be impossible to obtain general agreement on any rule which would allow the coastal State to extend its territorial sea or its fishing zone beyond the twelve-mile limit. It became equally clear that a solid majority of the participating States are against any maximum limit of less than six miles for the territorial sea. It was the conflict of interests with regard to the jurisdiction over the marginal zone between six and twelve miles which proved to be the stumbling block, and as I said, it is here that we should now concentrate our efforts to find a generally acceptable compromise.

Another general proposition which I would like to stress concerns our approach to the problems before us. This conference like the conference two years ago has been convened by the General Assembly of the United Nations, acting in pursuance of Article 13 of the United Nations Charter which makes it one of the functions of the Assembly to encourage "the progressive development of international law and its codification".

It seems to be perfectly clear that our task now is one which belongs in the domain of the progressive development of international law. In article 3 of its report 23/ on the Law of the Sea the International Law Commission concluded that the breadth of the territorial sea should be determined by an international conference. And in the same article - which has been quoted so often, and which has been subjected to such divergent interpretations during this debate - the Commission confined itself, as far as existing international law is concerned to the negative statement that "international law does not permit an extension of the territorial sea beyond twelve miles".

In other words, the International Law Commission found it impossible to achieve more than a delimitation of the field of uncertainty. It is our task to remove this remaining uncertainty, and this is essentially a legislative task. What we have to do is to negotiate and to work out a balanced compromise between conflicting interests and views taking into account facts of geography and economics, political and security considerations and other factors which come into play.

I have already stressed how important it is in my opinion that we should pay due attention to and profit by the lessons which emerged from the law of the sea conference in 1958. There is one more of those lessons to which I would like to call particular attention. It became clear in 1958 that if we try to weigh against each other the opposing interests of the coastal State and those of the community at large, the preponderant jurisdictional interests of the coastal State extends much further seawards where fisheries are concerned than in other respects. A majority of the delegations therefore supported wider maximum limits for the fishing zone than for the territorial sea. In my opinion it would be unwise and detrimental to the progress of our negotiations if we failed to take account of that fact. The division of the problem before us into two parts has also been clearly consecrated by the General Assembly in its resolution 24/ of 10 December 1958 pursuant to

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

24/ General Assembly resolution 1307 (XIII).

which this conference has been convened. By that resolution the General Assembly decided "that a second international conference of plenipotentiaries on the law of the sea should be called for the purpose of considering further the questions of the breadth of the territorial sea and fishing limits".

Another consideration which seems to be of primary importance, concerns the formulation of the rule of the law. It must be simple and easy of application. We should not yield to the temptation of working out an abstruse and complicated formula susceptible of divergent constructions by the parties to the accord. And let us beware of leaving any of the important issues at stake to the rather uncertain fortune of future arbitration. It is our task to arbitrate between the opposing interests. We should not shirk that responsibility by resorting to expedients which would mean a deferment rather than a solution of the problem before us.

I shall try to sketch briefly the main considerations which have determined the position of the Norwegian Government in regard to the proposals before us.

From the point of view of Norway's national interests we would very much prefer a narrower and maximum limit for the territorial sea than six miles. As I said a moment ago, we have some experience of being a small State with an extremely long coastline. We have maintained a territorial sea of four miles from the base-lines, and we think that we have been well served with this limitation of the territorial sea. If the principle of the contiguous fishing zone is accepted, we would not see any purpose in going beyond the four-mile limit with our territorial sea. It would only give us added responsibilities and entail new and heavy expenditures and we cannot see that we would gain anything as far as our security is concerned. We can already according to established rules go out to twelve miles of our base-lines to exercise control with regard to our customs, fiscal and sanitary regulations and to prevent and punish infringements of these regulations committed within our territory or territorial sea. In our experience this seems to be enough. We do not think that any practical purpose would be served by going out beyond the present four-mile limit with our territorial sea, provided, however, as I have said, that we do get a fishing-zone of sufficient breadth outside the four-mile limit with exclusive fishing-rights.

On the other hand, we realize that many States prefer a much wider limit for their territorial sea. Being one of the largest shipping nations in the world, we speak, however, from some experience when we submit that the right to free navigation would be severely hampered if for instance a twelve-mile limit, as claimed by some of the delegations, should become the universal rule of international law. It is true, of course, that the right to innocent passage through territorial waters is firmly established in international law. We see so often, however, that uncertainty and disputes arise when ships are sailing in innocent passage through the territorial sea of foreign States. Although we think that the law of innocent passage is clear enough and should not lend itself to widely differing interpretations, it is our experience that from time to time coastal States have a tendency to give the right of innocent passage a narrower interpretation than we find correct, and tend to limit the freedom of movement along their coasts. And, if I may add, such interpretations backed by the police-power of the coastal State is not always easy to come up against.

From the point of view of our own national interests we would therefore have preferred a maximum limit for the territorial sea of three or four miles, and frankly we also think that this is the limit with which the world community as a whole would have been best served. We realize, however, that a clear majority of States will not accept a territorial sea of less than six miles. We shall therefore maintain the concession we made during the 1958 Conference and be willing to go out as a general rule to a maximum limit of six miles for the territorial sea.

Now, as far as the fishing-zone is concerned, I shall at once state that the Canadian proposal 25/ on balance conforms with Norway's national interests. The modern technical development of the deep sea fishing industry and the greatly expanded trawling activities along the coast of northern Norway have created new and very grave problems for the coastal fishermen and the traditional methods of fishing. To a steadily increasing extent the possibilities for the coastal fishermen to use their traditional waters have been reduced. Not because their methods are uneconomical or inefficient, but because their fishing gear is being destroyed or their old fishing grounds partly or wholly occupied by foreign trawlers. People living along the shore of the northern parts of my country are entirely dependent upon their fisheries and they have been so since time immemorial. The new and threatening factor in their life during the last few decades has been the rapidly expanding foreign trawler fleets. They feel that this new factor - indeed the new conditions of life they find themselves in - calls for new rules and regulations, and there is nothing less we can give them, so it seems to us, than the right to keep a twelve-mile zone for themselves.

But I want to add that this delimitation where fishes are concerned also seems to us to strike a just balance between the opposing interests not only on the Norwegian coast but on the global plane. The high sea fishing fleet, equipped with all modern technical aids will still have ample opportunity to exploit the resources along the coasts outside the twelve-mile limit and in the open sea, and this is what my Government has had to say to our own deep sea fishers.

To these very important considerations of substance, which all strongly speak for the Canadian proposal, I would like to add, and I expect that most of you will agree with this, that the concept of a twelve-mile fishing-zone with a clearly established right to exclusive fishing for the coastal State is the only proposal which has a chance of satisfying a sufficient number of those States whose first choice is a maximum limit of twelve miles for all purposes.

Now I would like to say a few words about the other concrete proposals before us in this Committee.

The Soviet proposal 26/ has the undeniable advantage of being clear, unequivocal and easy of application. As I have already said, however, my delegation is not able to support any proposal which allows the territorial waters to be extended beyond six miles.

25/ Official Records of the Second United Nations Conference on the Law of the Sea, annexes, document A/CONF.19/C.1/L.4.

26/ Ibid., document A/CONF.19/C.1/L.1.

Neither are we able to support the Mexican proposal. 27/ It is indeed a very flexible formula, and sometimes flexibility may be all to the good. In our opinion, however, the Mexican proposal fails to meet one of the main requirements I set out at the beginning of my intervention. It does not seek the solution within that narrow margin of controversy to which we managed to reduce the problem at the previous conference.

As far as the United States proposal 28/ is concerned I would like to associate myself with the very clear and penetrating analysis which was made yesterday by my distinguished colleague from Yugoslavia. Apart from the question of its merit in equity, I would like to point particularly to its shortcomings from the point of view of simplicity, clarity and easiness of application. I agree with what was said in this respect this morning by the head of the Indian delegation, and I really have not much to add to that.

Mr. Chairman, I realize of course that I have only been able to sketch in the briefest outline the considerations which we have had to take into account before deciding what stand we should take on the proposals before us in this Committee.

In conclusion, I return again to the Canadian proposal. In addition to what I have already said, I shall have one or two remarks to make.

The Canadian proposal is clearly placed within that field of uncertainty in regard to the existing rules of international law which was delimited by the International Law Commission.

It also takes due account of that narrowing down of the controversial margin which was so laboriously achieved in the course of the first conference in 1958.

And it is based upon the common-sense functional approach which gives due consideration to the fact that the preponderant jurisdictional interests of the coastal State extends farther seaward where fisheries are concerned than in other respects.

Last, but not least, the Canadian proposal is as simple and easy of application as possible. I am firmly convinced that this formula is the only one which has any chance of conciliating the conflicting interests at stake on the global plane.

27/ Ibid., document A/CONF.19/C.1/L.2.

28/ Ibid., document A/CONF.19/C.1/L.3.