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Twelfth Meeting

Friday, 1 April 1960, at 10.45 a.m.

Mr. MUHTADI (Jordan): It is a great pleasure for me, Mr. Chairman, on behalf of my country, to extend to you and the other officers of this Committee our heartfelt congratulations, which I feel sure you well deserve.

To begin with it is fitting to recall, though the time and place do not allow of elaboration, that through a tragic and unprecedented set of circumstances, which are necessarily transitory and cannot therefore last, the Hashemite Kingdom of Jordan which I have the honour to represent, finds itself virtually landlocked, with only one remote access to the sea, at the Port of Aqaba. But the ancient and more accessible Arab ports of Acre, Haifa and Jaffa are still there on the coast of Palestine, anxiously awaiting in the fullness of time the return of the natives, their rightful owners.

Small Jordan, however, under God and the leadership of its valiant king, is, as is well known, a staunch believer in the rule of the law, and subsequently upholds international law, being the expression of the rule of law amongst nations. It is therefore my Government's firm desire to co-operate in the present conference and to contribute in a modest way tcwards the settlement of the problems which we have met here to solve, ending, it is earnestly hoped, in the ultimate success of this conference.

I have listened very carefully throughout the past Conference of 1958, and the present, to what my colleagues had to say on the subject before us. I have come to the conclusion, as a result, that we would not be true to the facts of the situation, if we did not candidly admit that our different points of view are predominantly, if not wholly, motivated by our own various national interests. There is, of course, nothing wrong initially in taking such a stand, but when it has become abundantly clear that the views of the nations assembled here cannot be reconciled, it behoves us all, I respectfully submit, to transcend these purely national considerations and to look at the problems facing us objectively and dispassionately, in an endeavour to reach a practical agreement which would be in the best interests not of any particular State or number of States but of the generality of States which form the community of nations. For it is only in this way that the true and lasting principles of international law can be formulated.

With this end in view, I most respectfully venture to suggest a new method of approach for your consideration. There are those amongst us who have spoken with fervour in favour of the six-mile limit, others have advocated the twelve-mile limit, and still others are not satisfied even with this wider limit, and have asked to be treated as exceptions to the rule, to be determined by this conference. Each of the three categories of speakers, it is only fair to admit, has sometimes put forward cogent and at times vital reasons and at other times truly sentimental reasons in favour of their own points of view. Every speaker you have listened to, carried as it were by the force of his own argument,

dictated, as we have seen, by his country's particular interests, has appeared to be sincerely convinced of the righteousness of the cause he had advocated. In the face of such diversity of opinions, it seems to me that until and unless the basic issue underlying all these views is first determined, and a criterion is discovered whereby to test the validity of each of these views, the exponent of each is entitled to hold that the view he advocates and defends is at least as good as any other.

The crucial question therefore appears to me to be the following: Can such an underlying issue as the one I have adverted to before be determined, or a criterion such as the one already suggested be discovered? It is humbly and respectfully submitted that with open minds on this subject and a true desire to reach agreement thereon, the basic issue behind all our lengthy arguments may be determined, and a suitable criterion may be discovered, whereby to test the various views and proposals advanced before this conference. To be able to do so, however, a new line of approach in the treatment of the questions before us will have to be adopted.

May I venture to suggest that the basic issue underlying all arguments on the questions before us resolves itself into the following two concepts, namely: The principle of the freedom of the seas, on the one hand, and the principle of the limit to which a coastal State may extend its sovereignty over the adjacent sea, on the other. There can be no doubt of the existence of both these principles, side by side, under international law as we now know it. Yet it cannot be seriously denied that the area which the first principle covers, and the limit to which the second principle extends, have not so far been agreed upon or determined. This lack of agreement on the exact area covered by the high seas, and the limit to which a coastal State may extend its sovereignty over the adjacent sea, is evidenced by the fact that different States have held different views on the subject at different times. Hence the reason and necessity for this conference.

Thus it would appear at the outset that some of the rules of international law are not water-tight compartments that exclude one another, but that they are at times interdependent and must be viewed together, and the proper and equitable balance maintained as required by the circumstances. In other words, where two principles under international law clash or conflict, the correct approach should be to devise a method whereby to resolve the difficulty. The first method that would naturally suggest itself would be of course one of reconciliation and compromise. But we have learnt by bitter experience, in this as well as other international conferences, that no such compromise can be achieved where vital interests of the States concerned are involved. In such cases, I submit that we are left with no alternative but to have recourse to the common sense rule of life as well as law, of having to choose between the lesser of two evils.

We all know that such a contingency is not foreign to the province of municipal law. To draw, if I may, upon well known principles of the Islamic system of jurisprudence, one such legal maxim lays down: It is better to avoid an injury than to incur a benefit. Another maxim lays down: A lesser injury may be tolerated

to remove a graver injury. I have no doubt but that similar principles are to be found in other well developed systems of law. With such common sense rules as our guiding principles, it should not be difficult to reach the following conclusion: That where a coastal State claims a wider limit of territorial sea for purposes of security and self-defence, such a claim should take precedence and prevail over the claim of other States to treat the waters contiguous to its coast as high seas for such purposes as fishing or commerce. For to apply these principles to the subject under discussion, though such other States may suffer some damage by a broadening of the territorial sea, the injury that would be suffered by the coastal State, by narrowing down the marginal waters which it considers necessary for its defence, would be much greater.

Though I do not lose sight of the fact, well known to us all, that analogies with the system of municipal law do not always apply to the field of international law, it is respectfully submitted that there is no reason why these principles should not apply here, especially as the said practical approach affords us with the only way out of this impasse, which has lasted since the first Hague Conference of 1930.

For these reasons, the delegation of the Hashimite Kingdom of Jordan would favour twelve miles as the limit of the territorial sea, and proposes to vote accordingly.

M. CHHAT PHLEK (Cambodge) : Permettez-moi tout d'abord de vous adresser à vous personnellement, Monsieur le Président, à Son Excellence l'ambassadeur Correa et à Monsieur le Rapporteur, les félicitations de ma délégation pour votre élection à vos postes respectifs.

En participant à la deuxième Conférence sur le droit de la mer, la délégation du Cambodge est consciente de l'importance des deux problèmes traités, problèmes délicats et très controversés qui constituent cependant la pierre de touche du droit international.

Depuis très longtemps, la codification du droit de la mer a préoccupé les plus éminents juristes internationaux qui ont exprimé leurs théories et indiqué les règles qui leur semblent justes et logiques, mais en général contradictoires.

C'est à la Commission du droit international que revient le très grand mérite de rassembler, dans son remarquable rapport, les éléments les plus complets pour servir à une codification et à une élaboration du droit de la mer susceptibles d'être adoptées par les nations, grandes ou petites, afin que la communauté internationale puisse jouir, sans frictions et sans jalousie, de la mer et de toutes les ressources qu'elle peut offrir à l'humanité.

La première Conférence sur le droit de la mer, en 1958, est venue enfin parachever l'oeuvre de la Commission du droit international puisque, à sa clôture, elle a pu établir plusieurs conventions internationales, conventions auxquelles mon gouvernement a déjà adhéré sans réserves.

Ces résultats portant sur de nombreuses questions fort complexes n'ont certes pas été obtenus sans heurts, mais ils n'en attestent pas moins l'esprit de compréhension et de conciliation qui régnait lors de cette Conférence et c'est là, me semble-t-il, une preuve suffisante d'encouragement pour que la présente Conférence consacre tous ses efforts afin d'arriver à un accord juste et équitable sur les deux seules questions encore en suspens : la largeur de la mer territoriale et la zone de pêche.

C'est, animée de cet esprit de compréhension et de conciliation, que la délégation du Cambodge suit les présents travaux, intimement convaincue par ailleurs que notre succès ne sera possible que si nous joignons tous nos efforts pour rechercher, parmi les diverses thèses en présence, une solution raisonnable et juste, susceptible de rallier le plus large suffrage.

En ce qui concerne la zone de pêche, il apparaît dès maintenant, ainsi que l'a fort bien souligné le délégué du Canada, que l'opinion générale serait prête à reconnaître à chaque Etat riverain le droit d'établir une zone exclusive de pêche dans la limite de douze milles marins, à partir de la ligne de base.

C'est à cette thèse que ma délégation souscrira volontiers puisqu'elle aura le mérite de sauvegarder l'intérêt des jeunes pays qui n'ont pas encore la possibilité de développer leurs moyens de pêche, sans pour autant léser celui des grands pays qui disposent de moyens puissants et de l'expérience nécessaire pour trouver dans la haute mer et même loin de leurs côtes des zones de pêche quasi inépuisables.

Ces moyens et cette expérience, mon pays ne les a pas encore. Notre population, à l'instar de beaucoup de peuples d'Asie, tire les protéines alimentaires dont elle a besoin de la pêche côtière qu'elle pratique à l'échelon artisanal avec des engins très rudimentaires et à faible rendement. Il n'est donc pas excessif qu'une zone de pêche s'étendant jusqu'à douze milles marins, à partir de la ligne de base, lui soit réservée exclusivement car, même à cette distance, c'est tout juste si les produits qu'elle peut tirer de la mer lui procurent assez de revenus pour subvenir à ses besoins normaux.

Pour ces raisons, ma délégation approuvera sans réserves toute proposition qui tend à reconnaître aux Etats riverains une zone de pêche exclusive jusqu'à une limite maximum de douze milles marins, à partir de la ligne de base.

Quant à l'étendue de la mer territoriale, si la limite des trois milles ne semble plus être défendue par ses plus fervents défenseurs, il n'en reste pas moins que les points de vue restant en discussion sont encore très divergents.

Des arguments de divers ordres ont déjà été avancés et développés par les orateurs précédents comme supports de leurs propositions. Ma délégation voudrait seulement rappeler qu'un grand nombre de nations ont déjà décrété une limite de douze milles marins ou plus pour leur mer territoriale. Il semble donc peu probable que ces nations puissent accepter de ratifier une convention ou une règle de droit international qui les obligerait à revenir à une limite inférieure, ce qui équivaudrait à une réduction de leur souveraineté. Or, à notre point de vue, toute règle de droit national ou international ne serait viable que si elle tient compte de la réalité tangible et non d'un principe abstrait non reconnu par tous. Si le droit s'écarte de la réalité, il risque de rester lettre morte et de contribuer non à une amélioration de la situation internationale mais plutôt à créer une source nouvelle de chaos et de confusion. C'est pour cette raison d'ordre pragmatique que ma délégation est prête à appuyer toute proposition raisonnable qui pourra rallier la grande majorité des appuis de la Conférence.

La délégation du Cambodge est prête à apporter son entière contribution et son meilleur esprit aux travaux de la présente Conférence et formule le voeu le plus sincère pour que de cette coopération internationale, dans l'enceinte de cet illustre palais, puissent naître et se fixer les deux dernières règles du droit de la mer les plus importantes pour la vie de l'humanité entière.

A ce sujet, permettez-moi cependant d'insister sur le fait que c'est pour discuter de la largeur de la mer territoriale et de la zone de pêche seulement que nous sommes réunis ici et qu'aucun problème particulier, quel qu'il soit, ne doit être soulevé. Ma délégation est donc obligée de déclarer que les revendications faites par une délégation sur un groupe d'îles se trouvant dans nos eaux territoriales et qui, sans contestation possible, appartiennent au Royaume du Cambodge, ne relèvent pas de la compétence de cette Assemblée et ne peuvent que compliquer sa tâche déjà difficile.

Au nom de mon gouvernement, je déclare enfin :

- Que l'île du Milieu et l'ensemble des autres îles situées au sud des côtes cambodgiennes, notamment l'île de Koh-Trâl (sur laquelle nous avons réservé nos droits depuis longtemps), font partie intégrante de notre territoire;

- Que nous nous réservons le droit de tirer les lignes de base droites, conformément à l'article 4 de la Convention sur la mer territoriale et la zone contiguë 1/;

- Et que nous appliquerons à la lettre et dans son esprit les dispositions de l'article 12 de la même Convention qui reconnaît notamment "les titres historiques et les circonstances spéciales" permettant la définition de la mer territoriale de deux Etats limitrophes.

1/ Documents officiels de la Conférence des Nations Unies sur le droit de la mer, vol. II, annexes, document A/CONF.13/L.52.

Mr. ORKOMIES (Finland): I wish, first of all, to extend on behalf of the Finnish delegation, our warmest congratulations to you, Mr. Chairman, as well as to Ambassador Correa and to Professor Glaser, upon your election to the high offices of this Committee.

It is not my intention to deal at any length with the history, nor with the background of the questions before us, since I believe, that they are by now well known to us all. I would like to make only some very brief remarks regarding the approach of my delegation to the matters now under consideration.

Finland has traditionally applied the limit of four nautical miles for its territorial sea in accordance with the old Scandinavian rule and practice. Both historical and geographical reasons speak in favour of Finland retaining this limit. It is, therefore, the intention of my Government not to widen our territorial sea.

My delegation has stated, however, already at the first United Nations Conference on the Law of the Sea that we are prepared to consider to support proposals containing a moderate extension of the general maximum limit of the territorial sea, if this would further the possibilities towards the reaching of an agreement in the matter. The conciliatory attitude of my delegation is still the same. Since it has proved to be evident that there are no realistic possibilities to reach an agreement without making provisions to establish a special fishing zone, my delegation is prepared to consider proposals even to that respect.

If we can reach an agreement, which my delegation does hope, the solution may cause changes in the conditions of fishing in several parts of the world. I feel that measures should be considered to protect the reasonable interests of the population of the fishing States, at least during a sufficient transitory period. On the other hand, there are no doubt exceptional cases where a country's economy depends almost entirely upon fishing. In such hardship cases it would be only fair to take into account the special circumstances.

The discussions at this Conference have clearly shown the difficulty and complexity of the problems which are facing us. It is, however, the sincere hope of my delegation that in a spirit of constructive co-operation we should be able to find a solution, based on a genuine appreciation of common interest and on widest possible acceptability.

Mr. USTOR (Hungary): Mr. Chairman, in joining my colleagues who have taken the floor before me, I should like to convey to you the very sincere congratulations of the Hungarian delegation on your unanimous election as Vice-Chairman of this Committee. May I also extend our warmest congratulations to our temporarily absent Chairman and to our Rapporteur on their respective elections.

Permit me to state very briefly the position of my delegation on the issues involved. Hungary is a member of the small but not unimportant group of the land-locked States. Hungary has no sea shore; in Budapest, however, in the capital of my country we have something like a maritime port. Small seafaring vessels built for the special purpose to navigate both on the sea and on the Danube are able to call on the port of Budapest hundreds of miles away from the sea. Hungary has a comparatively small but able merchant fleet of such vessels. They constitute an important direct link with the ports of the Black Sea, the Aegean Sea, Mediterranean Sea and others.

This narrow outlet to the sea does not cover the demands of our exports and imports and we are bound to use foreign sea ports and shipping also. In this connexion I have to mention that our ships were never restricted in exercising their right of innocent passage and our exports and imports always enjoyed the free access to and from foreign ports and shipping.

Hungary participated in the 1958 Conference on the Law of the Sea. Beyond the general interest which States had in the successful work of that Conference, Hungary - as a land-locked State - had also a special interest in it. The 1958 Conference dealt in its Fifth Committee with the problem of the land-locked States. On the basis of the work of this Committee, in whose deliberations the Hungarian delegation had the honour to take an active part, the 1958 Conference recognized certain principles of international law concerning the rights of land-locked States and embodied these principles in the Conventions adopted. So the principle that the freedom of the high seas is due also to the land-locked States has been restated in paragraph 2 of the Convention on the high seas. 2/ Paragraph 3 of the same Convention assures these States of free access to the sea, paragraph 4 recognizes their long since established right to fly their own maritime flag. The Convention on the Territorial Sea 3/ in paragraph 14 concedes the right of the vessels of the land-locked States to the innocent passage on the territorial sea.

2/ Official Records of the United Nations Conference on the Law of the Sea, vol. II, annexes, document A/CONF.13/L.53.

3/ Ibid., document A/CONF.13/L.52.

It is evident that the land-locked States are also profoundly interested in the solution of the problems lying before this second Conference of ours, namely in finding universally acceptable rules for the measurement of the territorial sea and the fishing limits. This is so firstly, because - to quote the words of preambular paragraph 4 of General Assembly resolution 1307 (XIII) the agreement on these two vital issues would contribute substantially to the lessening of international tensions and to the preservation of world order and peace. But beyond the general interest attached to these problems the question of the territorial sea is a subject of practical importance to the land-locked States which are also fully entitled to the freedom of the sea on an equal footing with the coastal States, and which are in the unchallenged possession of the rights of innocent passage.

Some speakers who have taken the floor before me appealed to the land-locked States and alleged that the interest of every State, land-locked States included, will be served best if we have a widest possible area of high seas. Conversely - according to the view of these speakers - the general interest and the special interest of the States having themselves no seacoast will be served best by the establishment of the narrowest possible limit of the territorial sea.

As a representative of a State having no seacoast, I respectfully take exception to this view on the following grounds.

The paramount aim of this Conference is to reach agreement on the breadth of the territorial sea and the fishing limits. This is the supreme interest of all States whether great or small, maritime or land-locked. In trying to formulate the rule of international law on the measurement of the territorial sea and fishing zone, we have to take into account the present circumstances, the realities and the trend of events in the international field. This has been expressed by the International Court of Justice in 1949 as follows: "throughout its history the development of international law has been influenced by the requirements of international life". 4/ This may sound as truism all the more as we seemingly all agree here on this in principle. Even those speakers who advocated the advantages of the narrowest possible territorial sea did not draw the logical conclusion from their starting point. Even they dropped the idea of the obsolete limit of three miles. Instead they propose a maximum limit of six miles referring to the realities, to the circumstances, to the general trend, and alleging that this is the narrowest limit which could possibly gain general support.

4/ I.C.J. Reports, 1949, p. 178.

My delegation, however, is unable to share this estimate. As has been pointed out by other speakers before me, the purpose of our exercise is not to bring together by every means the necessary majority for a paper resolution but to achieve a general, a real universal agreement; an agreement which will correspond to the desires and interests of most, if not all States. This aim can only be achieved if the realities of international life are taken into due consideration. The right of States to extend their territorial sea up to twelve miles, is not only maintained in legal theory but has been firmly established in practice. It belongs to the reality of our epoch that a considerable number of States have passed legislation fixing the breadth of their territorial sea up to twelve miles. The number of these countries is constantly increasing. This theory and this constantly spreading practice cannot be simply ignored when we want to express the rule of present international law in this matter. Nor can it be discarded and ignored that the new and young States insist for reasons both of security and of economic necessity to extend their sovereignty over a sea belt of twelve miles. All these States - old and young - act in good faith and in the firm conviction that their actions are in conformity with the rules of international law -
If we try to find the way to the lex ferenda in international law, then - I submit - we cannot miss to take into account the lex lata in the field of national laws.

The Hungarian delegation adheres firmly to the principle of the peaceful coexistence of States, irrespective of their economic, social and political system and ideological persuasion. It believes also that all international problems can be solved by peaceful means, by negotiations, by agreement. It trusts that the problem of the territorial sea, however great and difficult, can also be solved and that a common denominator can be found between the divergent interests of States. This common platform, however, cannot be reached by striving for uniformity, but only by a flexible formula that would meet with all reasonable requirements. My delegation believes that a claim to a twelve-mile territorial sea lies within these limits and that all proposals which do not embrace the satisfaction of these claims cannot count upon general and even less on universal acceptance. Such proposals, we believe, do not serve the interests of the coastal States, nor do they serve the interests of the States having no seacoast.

It is for these reasons that the Hungarian delegation will vote in favour of the draft resolution submitted by the delegation of the USSR in document A/CONF.19/C.1/L.1 and in favour of any other proposal admitting the right of the coastal State to extend the limits of their territorial waters up to twelve miles. Conversely, my delegation will vote against all proposals which refuse the recognition from the legally established twelve-mile limits and which refuse to recognize the same right of any other nations and particularly of those which newly became independent or will become independent in the future.

It has been repeatedly stated here how important it is that this Conference reach a success and a solution be found to the problem of the territorial waters and fishery limits. I cannot but emphasize this utmost importance of our deliberations and the urgent necessity that an equitable and universal solution be found. Indeed this Conference is a unique occasion for achieving this aim.

It is a unique occasion because the international atmosphere seems to be really favourable to reach agreement on vital issues and we should not miss this excellent opportunity. If we reach a real agreement, an agreement satisfying all equitable claims to territorial waters from three to twelve miles, this will not only open a new golden page in the history on international law but will substantially promote international co-operation and the cause of peace.

Mr. BAIG (Pakistan): Mr. Chairman, as my delegation is taking the floor for the first time in this Second United Nations Conference on the Law of the Sea, I extend to you my delegation's warmest congratulations on your election as Vice-Chairman of this Committee of the Whole, and through you, to Ambassador Correa of Ecuador on his election as Chairman. We are confident that with your great erudition, impartiality and thorough knowledge of the subject, you will together be able to guide us to the attainment of a unified law of the sea, which will best serve the interests of the majority of nations and which will secure for this Conference the acclaim of history. May I also congratulate Prof. Glaser of Romania on his election as Rapporteur of this assembly.

My delegation played its modest role in the 1958 Geneva Conference on the Law of the Sea in respect of the Conventions drawn up by that Conference and we shall again do our best to make what contribution we can to the success of these deliberations. The issues before us, though controversial, are neither complex nor difficult and the differences between us are not so formidable that they cannot be resolved if approached in a spirit of compromise and with recognition of the crucial importance of the occasion. It was indeed a great achievement of the last Conference on the Law of the Sea that it brought about general agreement in respect of 113 articles which were wide in scope and variety and ranged over subjects of great economic importance like the general regime of the high seas, the conservation of living resources of the sea, and the exploitation of the continental shelf. With hard work and goodwill, it was possible to deal with the varied complex problems falling under these three broad headings and the only two questions which remain to be settled are "The breadth of the territorial waters", and "The fishery rights". On these two issues we have already before us four proposals which have been submitted by the USSR, Mexico, the United States of America and Canada. I venture to suggest that even in these four apparently different proposals there is common ground which, if properly discerned, can form the basis of a generally acceptable compromise formula.

Permit me to deal with the first proposal 5/ in the first instance. The proposal which contemplates the extension of territorial waters up to a limit of twelve miles was introduced by the representative of the USSR, with the expression of the hope that the improvement in the international atmosphere will facilitate the success of our Conference. This proposal for extending the limit of the territorial sea up to twelve miles seems superficially to be backed by article 3

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

of the report 6/ of the International Law Commission, wherein the Commission remarked that it considered that international law did not permit an extension of the territorial sea beyond twelve miles. For the interpretation of this opinion, we have to be guided by the commentary of the International Law Commission which states that the extension by a State of its territorial sea to a breadth of between three and twelve miles would be valid for any other State which did not object to it, and a fortiori for any State which recognized it tacitly or by treaty, or was a party to a judicial or arbitral decision recognizing the extension. The commentary proceeds to say that a claim to a territorial sea not exceeding twelve miles in breadth could be sustained erga omnes by any State, if based on historic rights. Therefore, the Commission's opinion that international law does not permit an extension of the territorial sea beyond twelve miles was further qualified by its validity being restricted to a State which did not object to it or recognized it or was a party to a judicial or arbitral decision recognizing the extension. The Commission further circumscribed the scope of such extension by making it conditional on historic rights. Except in such circumstances, the extension by a State of its territorial waters up to a limit of twelve miles would not appear to be covered under the International Law Commission's opinion. If it were clear, as some representatives seem to imply, from the opinion of the International Law Commission that international law recognized an extension of the territorial sea up to twelve miles, there would have been no point in convening this Conference. The fact that we are meeting here for the second time to decide this issue is in itself a negation of the assumption that the twelve miles breadth of the territorial sea has the backing of the International Law Commission. On the other hand, the International Law Commission recognized that the rule fixing the breadth of the territorial sea at three miles had been widely applied in the past. It follows that the proposals to extend the territorial waters beyond the traditional three-mile limit are in the nature of compromises over historic rights in relation to the freedom of the high seas. However, leaving legal niceties aside for the moment, I would invite the attention of the Committee to document A/CONF.19/4, dated 8 February 1960, which contains a note by the Secretary-General and a synoptical table concerning the breadth and judicial status of the territorial sea and adjacent fishing zone. Of the States mentioned in the synoptical table, those which have a territorial sea of less than twelve miles exceed by about three times those which claim a territorial sea of twelve miles. This list is, of course, not exhaustive. While referring to this document, I would like to point out that in one case a somewhat confusing statement has been made under the limits for special purposes showing the fishing limits of our neighbour India as 100 miles, whereas the reference is really to a power to establish conservation zones within 100 miles, which again is to be viewed in the light of the Convention relating to living resources of the sea. This needs correction. It would also be helpful if the synoptical table could be completed by the Secretariat by reference to the various delegations present here, and a more informative document could be issued which would enable the Conference to study the issues with greater clarity and precision.

6/ Official Records of the General Assembly, Eleventh session, Supplement No. 9, para. 33.

It may perhaps be helpful if some indication were attempted of the effect on high sea passages at places of maritime importance, of an extension of the limit of the territorial sea to twelve miles. In the English Channel, of which the littoral countries are the United Kingdom and France, the minimum width in miles of navigable channel is seventeen miles. With the extension of the territorial sea to twelve miles, no high seas will be left for a length of thirty miles on the English Channel. Similarly, in the Malacca Strait, of which the littoral States are Malaya and Indonesia, the navigable channel would be restricted to a width of one mile for five miles between Aruah Island and Port Swettenham. On the Aegean Sea a number of places would cease to be high seas with a twelve miles territorial sea limit. Such instances could be multiplied but I do not wish to take your time by narrating them.

Let us now view this problem from a purely economic angle by considering the theoretical possibility of the littoral States exercising control over the merchant vessels passing through their territorial waters. Marine costs will tend to go up because of the consequential delays which may be involved in the checks to be exercised by the coastal States or because of longer journeys undertaken to avoid such controls. This will result in no benefit either to the producing or to the consuming countries of the world, least of all to the common man who will be the chief sufferer. Perhaps such economic considerations would not be so important were there some real advantage in the political or the security spheres. But the political and security advantages are not clear. On the contrary, the power to extend the coastal waters involves concurrent political and security responsibilities and obligations which the majority of States may well find extremely difficult and expensive to undertake. The navigational difficulties which would be caused to other States by such extension have been vividly described by the representative of the United States and the advantages accruing to the coastal State whether political, security or economic, I would repeat, are just not apparent.

My delegation is also of the view that leaving the fixation of the territorial waters flexible as between three and twelve miles limits would hardly contribute to international uniformity. The only uniformity which could arise from such a decision would be the extension of the territorial sea uniformly to a limit of twelve miles, with all its adverse effects on sea and air navigation.

I now turn to the Mexican proposal. 7/ The first part of this proposal is similar to that of the USSR proposal and the foregoing submissions which I have offered apply to this part of the Mexican proposal likewise. The second part of the Mexican proposal is what may be described as a "compensation scheme". This ingenious scheme provides for a larger fishing zone in compensation for a correspondingly smaller territorial sea. The proposal suggests that if the breadth of the territorial sea is from three to six miles, the fishing zone may

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

be up to eighteen miles. This proposal which is cleverly designed to persuade States to content themselves with the minimum territorial sea in exchange for extended fishing rights has in our view the disadvantage that it will contribute not to uniformity but to lack of it. The wide options given may well lead to much confusion.

Now I come to the United States proposal. 8/ This proposal has the merit that it seeks a compromise between the aims of the States which ask for a twelve miles territorial sea and those which would prefer a three miles territorial sea. In fact it aims at bringing about a compromise between the aspirations of the large maritime fishing States and new States in the process of developing their fishing resources. This proposal is the same as the Canadian proposal 9/ in respect of the territorial sea limit, and the fishing rights limit, but the point of difference is that whereas the Canadian proposal allows exclusive fishing rights to the coastal States inside the six miles contiguous fishing zone, the United States proposal permits the continuance of historical fishing rights in their outer zone. The consideration prompting the Canadian proposal is the recognition of the paramount interest of the coastal State in the living resources of its adjacent fishing zone. On the other hand, the consideration behind the United States proposal is that those maritime States which have built up large fishing fleets should have qualified historical fishing rights reserved for them. From the statement made by the representative of Canada it appears that his main objection against the United States proposal is that it seeks to protect, with some limitations, the historical rights of fishing States in perpetuity. This objection indeed has much force. But to be quite fair, before existing rights are extinguished by any piece of legislation, a period of time is normally allowed for the affected party to make necessary adjustments. It may perhaps bring about a compromise between the United States and the Canadian proposals if the historical rights sought to be safeguarded by the United States proposal could be limited over a period of time, ranging from five to ten years. Within this period of time, the large maritime fishing States could devote their attention to locating new fishing grounds on the high seas and gradually moving out of their existing fishing grounds situated within the outer six miles fishing belt. Such a proposition would, in the view of my delegation, be reasonable and fair because many fishing States have by means of their large fishing fleets and comprehensive surveys discovered fishing grounds which are now open to the benefit of the coastal States as well. If the fishing States had not surveyed their waters, discovered large schools of fish in certain sea pockets, some coastal States with their meagre and undeveloped resources would perhaps never have discovered these rich fishing zones within an appreciable length of time. Therefore, in consideration of the expenditure incurred and the efforts made by the fishing States which have made available fishery resources for the benefit of the coastal States, the coastal States might gracefully permit the fishing States, who claim

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

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

historic rights, reasonable time in which to quit the outer six miles zone. My delegation has no strong views on the question whether such historic rights be safeguarded by law or by supplementary bilateral or multilateral agreements.

I have one more comment to make in respect of the annexure attached to the United States proposal which provides for machinery for arbitration. An effective arbitral machinery was provided with common consent in the Convention 10/ on the Conservation of the Living Resources of the High Sea in Committee III of the 1958 Geneva Conference on the Law of the Sea. We would suggest that the arbitral procedure as already accepted therein should mutatis mutandis be made applicable in the context of the United States proposal. This, however, is mainly a drafting matter.

My delegation retains an open mind on the whole question and is most anxious that a fair agreement be achieved in order to put an end once and for all to the existing uncertainty and lack of uniformity. We shall, therefore, use our best endeavours to secure the success of this Conference. My delegation is of the view that the proposition most likely to secure general acceptance is a six miles territorial sea with a further six miles fishing zone and it is this concept that we shall support.

10/ Official Records of the United Nations Conference on the Law of the Sea, vol. II, annexes, document A/CONF.13/L.54.