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Fifteenth Meeting

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Mr. QUENTIN-BAXTER (New Zealand): I did not think it necessary to intervene in the earlier stages of this debate, nor even now do I intend to give any extended account of the special circumstances of my own country. New Zealand is one of the Pacific countries embraced in the description which the representative of Brazil used, a country in comparative isolation, separated by 1,300 miles from its nearest neighbour Australia; a country in which there are no well-established foreign fishing activities, nor have New Zealand ships engaged in distant-water fishing. Our problems then have been relatively uncomplicated compared with those of many of the States represented at this Conference.

In those circumstances we have been more than willing to listen, to try to understand and assess the viewpoints of countries with special interests and problems. We have heard the main exponents of the States with these special interests, and of the States which have taken a leading part in suggesting methods of solving the problem of delimiting the territorial sea and fisheries there. We have been encouraged by signs of progress in the Conference. It does seem to us that behind the extreme keenness to maintain fixed positions, there are welcome elements of flexibility and a growing appreciation of the substantial nature of the interests which conflict with those of the States concerned. This spirit of rapprochement, of developing a common purpose, is essential to our work and it augurs well for a final settlement of a very bedevilled problem.

Latterly also there has been a tendency for speakers to look beyond the rival proposals now before the Committee, to seek out in variations of these proposals the narrow path to agreement, for the parties now are hemmed in by the necessity of compromise.

New Zealand is a new country and a developing country. Its economy is dependent on sea-borne traffic. No country is relatively more dependent than my own on sea-borne trade and on keeping the sea lanes clear. I may say in passing that my own country like many another developing State does not transport most of its imports or exports in its own ships. No doubt in the course of growth we may develop a greater share in our shipping, but this is part of the ordinary growth of States and it means no conflict of interest with other States. It certainly means no lessening of New Zealand's interest in preserving the freedom of the high seas; but in large measure our interests are also those of the average coastal State. Our coastal waters are more productive in fisheries than those of some other States, though they do not have that degree of wealth in fisheries which would offer other States any great inducement to fish in our waters if they were invited to do so.

We stand to benefit by the terms of any agreement which enlarges the exclusive rights of coastal States in their own waters. The assignment of this right would in our case harm nobody. A speaker yesterday used the description of the rival

interests between geography and history. I think the phrase has a certain validity and certainly New Zealand is a country whose interests are in terms of geography rather than of history, and that is certainly one of the essential elements in any solution of our problem. There must be a greater regard for the interests of the coastal States in the waters around them. That element is contained in every proposal before the Committee. But, at the same time, glad as we should be to have this greater control over our own fisheries, the main object always must be to obtain agreement, and that means catering for the views of other people, for without agreement there is nothing.

I speak to make known our own strong and sincere interest in reaching agreement, in pursuing the opportunities of agreement which seem to be opening up before us, and to do what my own delegation can to ensure that the very narrow path to success is not obscured. It has been said by many speakers that agreement will demand a major sacrifice. Quite early in our deliberations the representative of the Soviet Union mentioned that we might hope for success if we approach our work in the spirit of the Conference which drafted the Antarctic Treaty.1/ I think that is true and that an essential element in that Conference was the willingness of States, with interests, to subordinate those interests in some measure to secure the common interest. Our Conference requires that kind of sacrifice, and whatever we do it will fall unevenly. Even so, it cannot be one-sided. It is not possible that in one context established claims should be inviolate and that in another context rights which are juridically complete should merely be overridden without regard for the countries affected.

In another forum the United Nations has been studying outer space with a view to developing a system of common property in a sphere in which no individual rights of nations have yet been established. Our case is very different for the sea is a more familiar element. Mankind has been with it for a long time, and for some centuries nations have been establishing rights and interests which are either exclusive or held in common with other States. At first sight it might appear that the object of this Conference is quite opposed to the studies of the law of outer space. It might seem that here we are on a different tack, that we are concerned primarily and almost exclusively to enlarge the rights of individual States against the common domain. Indeed, it has been suggested that the freedom of the seas is itself a weapon forged by the maritime powers to thwart the rightful interests of the coastal States.

One of the unfortunate features of our discussions is that arguments to defend extreme assertions of individual national interests involve some distortion of guiding principles which we must follow if we are to have regard to realities and equity. But happily this is not a dominant opinion. There is a large measure of agreement and my own delegation cordially agrees that the freedom of the high seas and the interests of coastal States are compatible and complementary. So I think that it is valuable to begin by giving some consideration to the things we hold in common.

1/ Signed at Washington, 1 December 1959. British Parl. Papers, Misc. No. 21 (1959), Cmnd. 913.

There may well be some benefit to the doctrine of the high seas by gaining a better delimitation of territorial waters and contiguous zones. This is probably the only way to protect the high seas themselves from the risks of piecemeal erosion. A gardener with his spade can cut off a few pieces of turf to smooth the edges of a lawn and to preserve its shape. But he must take care not to chip away too much so that he destroys an essential part of the very thing he is tending. This is the kind of question we face when we look at the six-and twelve-mile territorial water proposals before the Committee. The six-mile proposals are double the minimum distance outlined by the International Law Commission as the lowest limit of the territorial sea. We can interpret this assertion of a six-mile limit as being a sort of victory in a continuing tug-of-war that may pull all the way to twelve miles or beyond. But that is a partisan attitude which can scarcely bring our Conference to success. We all have to make sacrifices to reach agreement. In my delegation's view the essential feature of the two twelve-mile proposals is that there is no real compromise with conflicting points of view. It is true that States may, if they choose, accept a lesser claim than twelve miles and in one case they may be compensated with even larger exclusive fisheries then, as a result. My delegation believes that it is only possible to accept this viewpoint by once more distorting a guiding principle, by giving an aura of reasonableness of a twelve-mile proposal through using as a springboard a neutral statement of the International Law Commission. The Commission says that international law does not permit an extension beyond twelve miles. It does not follow - and the Commission makes it very clear that it does not follow - that international law confers a complete right to fix unilaterally limits up to twelve miles.

There are, however, much more serious arguments in support of a twelve-mile territorial limit; and of these, one of the most difficult to assess and to deal with is the claim that such a limit may be necessary to the defence of a coastal State. It is difficult to deny to any State the right to take measures which are reasonably necessary for its own defence, and a claim asserted by a number of States on this ground demands careful attention.

I would not propose to look at the question in any detail. But I do think that if we are to get away from the old out-worn argument about the range of cannon shot, we need to take a new context, and perhaps the best context is the general atmosphere of the debates on disarmament in the General Assembly of the United Nations. In those debates we all recognize two elements: we acknowledge that it is not possible to achieve security without agreement among the great Powers, that there can be no rule of law which matters unless it is firmly and reliably based on such agreements; and at the same time we insist upon the moral authority of the United Nations itself and the rights of its individual members to assert their views in the Assembly. We believe that the United Nations, subject to the necessity for agreement among the great Powers, has the capacity and the machinery to preserve the peace.

At present the security of all States and especially of the less powerful States which make up the great majority of the States in this world cannot be perfectly secure. But my own Prime Minister, speaking in the First Committee of

the General Assembly, asserted that while we all take such measures as we are able and think to be necessary for our protection, the United Nations is the foremost protection of small States. 2/ This we believe. And in this context it seems to us an illusion to suppose that three or six or twelve miles of territorial sea provides an insulation against the threat of force. We agree that the old cannon shot rule is no longer a very useful guide. But it does not seem to us that if we base ourselves on the range of missiles much will be gained by discussing slightly larger areas of territorial seas for the purpose of defence. We realize that this view is by no means a universal one, and we are content with proposals which do indeed offer six miles of territorial sea. My own country does not see for itself any advantage in this bestowal of larger territorial waters of greater sovereignty, but we respect the desires of other States and we have no doubt that the six-mile territorial limit must be part of the final formula.

We believe, however, that the real danger, the greatest danger to States and particularly to small States lies in lack of agreement at this Conference. Once again the recognition of the danger depends on a plain reading of the International Law Commission's draft article and commentary. And in that context, because it seems to us so important, I may perhaps be permitted to quote a short passage of the commentary which has already been quoted:

> "The extension by a State of its territorial sea to a breadth of between three and twelve miles was not characterized by the Commission as a breach on international law. Such an extension 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. A claim to a territorial sea not exceeding twelve miles in breadth could be sustained by any State if based on historic rights. But subject to such changes, the Commission by a small majority declined to question the right of other States not to recognize an extension of the territorial sea beyond the three-mile limit." 2/

It means that if a coastal State chooses to assert unilaterally a breadth of territorial waters greater than three miles and not greater than twelve, and if another State with substantial interests in that water chooses to contest this assertion, there is no way in law of judging between them. International law, as it at present stands, merely keeps the ring. Indeed, it abjures the international community from judgement between the parties. Moreover, there is a positive inducement, an onus on the States concerned, if they feel strongly enough about it, to make gestures to preserve their own rights as against the rights of the other party. This is a position so dangerous in itself, so productive of possible disputes, so inimical to the growth of the rule of law, that it is as out of date as trial by ordeal.

2/ Official Records of the General Assembly, Eleventh Session, Supplement No. 9, para. 33, Article 3, Commentary, para. 4.

It is the primary task of this Conference to settle a rule of law which will put an end to this situation. It could be settled perhaps by the adoption of a twelve-mile rule, but the way to agreement must be the path of compromise. I suppose that if any of us were advisers to the international community as a whole our advice would be that almost any solution was better than a continuation of this hiatus in the law. But that very fact, the fact that the stakes are high, may be a positive inducement to interested parties to feel that the other party will pay rather than risk a negative result. The only way to overcome the problem is to follow all the time the just balance of rights and interests and sacrifices.

My delegation finds it encouraging that some countries which prefer the twelve-mile rule do so not on the grounds of defence but for economic measures, and that a not inconsiderable number of these countries recognize that similar advantages can be obtained under a rule which promises six miles of territorial water and a six-mile contiguous zone. These States are prepared to entertain the possibility of supporting a solution which may be able to gain here the necessary two-thirds vote.

As is well known to you, sir, and to the Conference, it was a Canadian formula 3/ which produced the idea of an exclusive fishing zone - a brand new idea and one which commanded quick support because it gave an opportunity to satisfy many of the demands of coastal States without prejudicing the rights of navigation by air and sea, which are an essential part of the freedom of the high seas. The Canadian proposal which was placed before this Conference offers the coastal State the same exclusive fishing rights as in its own territorial waters, but it preserves in the outer six miles the present liberty of ships and aircraft to sail on and fly over the high seas.

There are here some of the elements of an acceptable compromise. I would not say anything much about the right of innocent passage because many speakers have dealt very adequately with the difference between a right that is unlimited and absolute, a right on the high seas and a right which, however fairly administered, is subject to the restrictions which may be imposed by a coastal State. And in the context of aircraft, even that right of innocent passage does not exist.

If I may, I will not speak further about this right of navigation, except to remind the Conference once again of the distinction between the absolute right of flight over the high seas and the limited and factual rights which are very complex because they are based on national security, on aircraft safety and on mutual concessions by contracting States. These latter rights are contractual in form, the other right is absolute; it is part of universal law and it would, I think, be a tragedy if we were in any way to limit it.

3/ Official Records of the United Nations Conference on the Law of the Sea, vol. III, annexes, document A/CONF.13/C.1/L.77/Rev.1.

There remains one question, that of historic fishing rights. The United States proposal 4/ makes provision for some recognition of the rights of distant water fishing States. The Canadian proposal 5/ does not. I should say that without the Canadian concept of a fishing zone it would not have been possible even to consider the rights of historic fishing States, for the area would have been swallowed up in a twelve-mile territorial sea. But, once again, the Canadian proposal is subject to modification, has been modified or has appeared in another form in the United States proposal, and once again my delegation believes that this element of recognition for historic fishing rights is an essential element in any agreement. The question is perhaps whether historic fishing rights are merely one of the minor things, one of the minor hardships which any universal rule will distribute unevenly upon some States and the rule we propound here cannot take account of every special case.

A number of speakers have reminded us of the tremendous diversity of the situation in different parts of the world and in various seas. But we must apply a global rule and a rule which is comparatively simple. We have to cut away through the brush, we have to leave some latitude for regional adjustments, for bilateral arrangements. The question is whether the historic fishing rights may be dismissed in that way. My delegation thinks not. We cannot accept the view that the hardship is limited, that it can soon be adjusted, that there would be no basic injustice to the States affected. We believe, on the contrary, that there is a growing recognition of the real hardships that there would be.

The rights protected in the United States proposal are not prescriptive rights; they are not rights gained over a short five-year period. Nor are they exclusive rights which have been built up by assertion against the international coomunity or against the coastal States. They are rights to use the resources of the high seas enjoyed by every State and exercised by some States over a long period. The five-year rule is a rough-and-ready test to distinguish the substantial users from those who have not relied in the past on this right of distant water fisheries. No one has suggested that the test is in practice unjust. And indeed the test does not ensure that the right of the coastal State will not be subjected to historic fishing rights except when there is very good historic precedent for doing so. I think it is also a disservice to suggest that these are rights which the maritime Powers assert to the detriment of fledgling coastal States. The position, as we have come to know it, is very different. The States affected are large and small. It has been said that what is given in international assistance is taken away by this type of assertion by the major Powers. I think, on the contrary, that it must be realized that to take away an established right of this kind on which whole communities have based their living from father to son and from generation to generation is almost an

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4/ Official Records of the Second United Nations Conference on the Law of the Sea, annexes, document A/CONF.19/C.1/L.3.

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

unprecedented act of law. Certain restrictions of the right are no doubt necessary in order that we should be able to reach a final rule. But I think that we must judge by the standards which the United Nations uses when it thinks not merely in terms of the right of State against State but of the welfare of individuals and communities. This is a situation in which the world community is called upon to make a rule which affects regional situations in different ways, and one of the most important of these situations is among the European States and within the North Atlantic Community.

It is important that we should judge these situations by the same standards which we adopt when we are considering how to bring help to communities in other parts of the world and in countries that are less developed and which are older or younger than the European countries.

The United States proposal does not offer a full recognition of historic rights. These rights will be extinguished within the six-mile zone and there is a quantum provision which prevents their being increased at any time. That is not to say that we think that the United Nations proposal is perfect or immune from criticism. There is undoubtedly strength in the view that it is difficult now to establish a new perpetuity, rights which would be enjoyed by some States and not by others. There is also an undoubted practical difficulty in administering these quantum provisions. Partly for these reasons, partly for the purpose of trying to obtain a better balance, various compromises have been suggested. The basis of these compromises has always been an acknowledgement that there is real hardship involved in taking away historic fishing rights. l We think that that is a realistic assessment. It may be that we can avoid some of the objections to the present proposal by considering the ending of these rights within a period of years. The idea has been suggested; it has yet to be fully considered. Certainly we do require the help, the co-operation and the acquiesence of the States with historic fishing rights if we are to establish a rule of law which will really serve its purpose, which will be subscribed to by the community of nations. And if it be that we can do this for a term of years, then I think that we can afford to be reasonably generous in estimating that period of years. It is not, after all, a very impossible matter to discover and ascertain just what is involved in terms of capital investment, in terms of redirecting the economic life of the communities affected. To do that, I realize may also involve some compensating provision, particularly where there is a case of very great hardship on the part of the coastal States, and I would think that a special regime in the extreme case might well have to be an established part of any such agreement. In most cases, however, the growth of the coastal States, and of its own ability to use these facilities should not exceed the rate at which the present user can terminate his interests.

In conclusion, as the proposal stands, my delegation will support only that of the United States because it seems to us that that is the only proposal which contains all of the essential ingredients. We recognize that there may be room for some revision of the receipe, but we think that the ingredients must remain, and as the proposal stands we shall vote on that basis.

Sir Claude COREA (Ceylon): There have been two international conferences on the subjects that are now under discussion here and, in regard to these two questions, those conferences failed to achieve any successful results. It was also the intention of the United Nations to hand over the consideration of the whole question of international law regarding maritime matters which led to the decision 6/ to request the International Law Commission in 1949 to consider this matter. That Commission, after considering the situation for nearly seven years, was unable itself to reach agreement on these two problems, which have now been delivered to us for our consideration, although it must be said that the International Law Commission succeeded in a very special way in drawing up articles on various aspects of the law of the sea, which were adopted in the 1958 Conference in four conventions.

It was the failure of the 1958 Conference to achieve any agreements on these two matters that led the United Nations General Assembly, on 10 December 1958, 7/ to convene another conference to consider these two matters.

We are therefore met here now, in consequence of that resolution, to make further efforts to reach agreement on these two problems, which, it must be admitted, are vital questions of international maritime law. These need to be settled as quickly and as equitably as possible.

I do not propose to take this Committee through a detailed review of the history of the reasons which led to failure, two years ago, to reach agreement on the question of the width of the territorial sea and the fishing zone. But a few words would perhaps be necessary to see the position in the proper perspective.

The Conference, as we all know, succeeded in reaching agreement on certain very important aspects of international maritime law. The first Conference was therefore not a total failure, but we have regretfully to admit that the success of that conference was only partial. All the other questions on which agreement was reached at the first conference also depend for their final ratification and universal acceptance on an agreement with regard to the breadth of the territorial sea. This, therefore, is the crucial issue.

It is the view of my delegation that at the 1958 Conference we were very near an agreement on this question and also on the allied question of a fishing zone. If we had had some more time, the spirit of good will and the desire that

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

7/ General Assembly resolution 307 (XIII).

existed at that time to find an accommodating compromise might have succeeded. Unfortunately, for many reasons, we did not have that extra time. The very fact that the Conference adopted a resolution 8/ requesting the General Assembly to convene another conference supports the view I have set out and attests to the fact that that was the view of the members of that conference. We all felt at that time that an agreement was within reach. It will be recalled that the Conference, in its report to the General Assembly, referred to the lack of time as one of the reasons why agreement could not be reached. It will also be recalled that this lack of time was mainly due to the laborious and extensive debates that took place on the question of the three-mile limit. It was clear that the objective of those who participated in that debate was, as regards some of the participants, to support and substantiate the three-mile limit as having the sanction of international law, and, as regards the others, to contest the validity of that claim. There was no desire at that time to compromise. It was a grim fight to the death, and an attempt to find a complete compromise was not made until we were nearing the end of the conference, when it was clear that the three-mile territorial sea was unacceptable to a large majority. And we know how the compromise proposal 9/submitted by the United States very nearly succeeded in gaining a two-thirds majority. 10/

We therefore begin the present conference under better auspices. In fact, the representative of Saudi Arabia was quite right when he referred to the present conference as a continuation of the first conference. What we have to do is to carry on from where we stopped. We must regain the climate of goodwill and continue the search that will bring us to the haven of agreement. And it is very important at this time that we succeed. It is also a propitious moment in international relations. International agreement is being seriously and hopefully sought in the sphere of total and complete disarmament. Agreement on a nuclear test ban is in sight. International tension has been reduced. At such a time, our work here, if successful, will aid this great upsurge of world aspirations toward the realization of peace. If we fail, we will obstruct the path toward peace, because international tension will certainly arise once again and nations will revert to the use of force to win or protect their rights to exclusive fishing in their coastal waters and their claims to any limits they think necessary for their territorial sea. Therefore, we are of the opinion that we cannot afford to let this conference end on a note of failure. To attain success, there must, of course, be goodwill, patience and understanding. I have no doubt that we at this conference have those qualities. But there is one quality that must be pre-eminent: it is the capacity to adopt an objective outlook. It is true that we all have our own special interests. If we try to advance those, and those alone, we shall fail. Small as my country is, we have interests which may be important and indeed necessary from our point of view. But others have similar interests, and conflict is inevitable if we pursue that path. We should therefore adopt an objective attitude and try to find out what is right in the common interest of all.

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

9/ Ibid., document A/CONF.13/L.29.

10/ Ibid., 14th plenary meeting, para. 60.

We may begin this objective search by starting off with the universally accepted principle of the freedom of the high seas as a point of departure. Every one will acknowledge that this principle is one that is not only recognized by international law but is in the interests of the whole community of nations. However, it was generally recognized from very early days that each coastal state had legitimate reasons for considering that a certain breadth of the high seas adjacent to its coastline should be regarded as falling within its jurisdiction for purposes of security and self-defence. Accordingly, from the time of Grotius onward, it has become apparent that the principle of the complete freedom of the high seas had to be modified to meet the requirements of states. The reservations of national jurisdiction were necessitated by reasons of security and commerce and for the exclusive enjoyment of the living resources of the sea by the people of coastal states. It was for these reasons that the concept of territorial waters had historically come to gain universal recognition.

In trying to determine how far they were entitled to encroach on the high seas in order to guarantee their national security, sovereign states have not found a truly common standard. One school of thought had in the dim past advocated a distance from the coastline representing two days' navigation. Others have suggested that the territorial sea should extend as far as the visual horizon. A later concept of the territorial sea dates from the theory, attributed popularly to Grotius, that a state was entitled to claim as its own whatever area of the sea it could command by force of arms.

That theory gave birth to the cannon shot rule, which has been referred to here and which eventually became the basis of the widely popularized three-mile limit. No one will seriously contest that, in the middle of the twentieth century when the range of missiles is increasing with such tremendous rapidity, a limit which is based on such an historial accident is patently absurd. I do not think, therefore, that it is at all necessary to take the time of this Committee to examine this question of a three-mile limit for the territorial sea. That matter was, as I said before, fully and hotly debated at the first Conference, and it became clear that even the apostles of that worn-out international creed could no longer defend it. They were prepared, under certain conditions, to resign their original position - a position which was so stoutly opposed at the beginning of the Conference - and, as their words indicated, they were willing to abandon the three-mile limit in favour of the more realistic conception of a six-mile limit. We can, therefore, conclude that the three-mile limit as a rule of international law is dead.

At the last Conference, it will be recalled, my delegation had declined to support the three-mile limit, urging that it be modified to keep abreast of changed circumstances and the needs of the present time. It is our view now, as it was then, that it would be dangerous not to define the breadth of the territorial sea by law. This Conference, in order to succeed, must reach a compromise therefore between the two limits which have been extensively canvassed, namely, the three-mile limit and the twelve-mile limit. My delegation, at that Conference, was actively engaged with several other delegations in furthering a

compromise arrangement which would recognize a territorial sea of six miles, in the hope and belief that such a limit would be generally acceptable to the international community as a whole as being both a reasonable and an equitable solution of the problem.

This is the problem we have to solve at this Conference. It is a fact that the practice of States in the matter of delimitation of their territorial seas is not uniform. Our task, therefore, is to formulate a new rule of law acceptable to as great a number of States represented here as possible and to embody it in a convention. For such a rule to be acceptable and, if accepted, to be capable of ready ratification by Governments it must, in our view, be a rule based on a fair and reasonable solution of an admittedly difficult problem. One of the tests of reasonableness in this context appears to my delegation to be the universally recognized democratic one of majority acceptance. Whatever views individual States might hold, it is to be hoped that the will of the majority would be respected.

It is our view that the twelve-mile limit for the territorial sea is important in the modern technological age - not so much from considerations of national security or self-defence, on which basis the twelve-mile limit has been put forward by its supporters at this Conference. It is not important from that point of view as much as from the point of view of the vital importance of the living resources of their coastal waters to the economies of the coastal States. In our view, therefore, a reasonable extension of the territorial sea is indeed necessary and it would not in any way embarrass or jeopardize the principle of the freedom of the high seas. We believe that there is a sufficient expanse of ocean for all to share. We are, therefore, glad to note the changed attitude of the great Powers in recognizing the growing needs of the smaller countries and in agreeing to a fair and equitable revision of a limit which existed in the past simply because of an archaic consideration of national security which is not even any longer valid.

We should like to stress that at this time, in this age, in view of all the modern technological developments that have taken place, it is difficult to support the need of a twelve-mile territorial sea purely for purposes of the defence and the security of any State. I have already indicated to the Committee that the needs of national security would not be seriously altered in the modern ballistic age if the territorial sea were to be six or twelve rather than three miles. The argument based on such differences is, to my delegation, untenable in the context of modern technological military defence.

It has been suggested that another reason in favour of the twelve-mile territorial limit is that it affords protection to smaller countries, especially against the presence of warships of other and more powerful countries near their coasts engaged either in naval manoeuvres or in intimidation of smaller coastal States in times of crises. It is argued that if a six-mile limit is fixed these vessels will be able to come quite close to the coastal States. This may be a legitimate fear, but it is a fear which can be met by a special provision giving the right to a coastal State to insist on permission being obtained before foreign

warships could come to or manoeuvre in the sea contiguous to the territorial sea. Thus there could be a six-mile territorial sea and special rights in the adjacent zone of six-miles for this special purpose, which should meet the fear entertained by some coastal States. This is a matter, of course, for further consideration at a later stage. The only valid reason which we feel could be used from the point of view of national security is that of preventing illicit immigration, smuggling and other evasions of customs, and matters relating to criminal jurisdiction against passengers aboard ships. It would, therefore, seem to us that under modern conditions a reasonable extension of the three-mile limit would be sufficient to cover those matters as far as is possible.

It may be argued that too great an extension of the territorial sea may create difficulties because such an extension, instead of increasing the security of a State, may well reduce its security by involvement of that State in conflicts arising from inability to protect its extended rights. Furthermore, with wide extensions of the territorial sea there would be additional areas in which the right of innocent passage would have to be applied, with the possible result of increased areas of dispute. It might be argued also that too wide an extension of the territorial sea would unnecessarily interrupt and impede the flow of commerce. Freedom of commercial intercourse is in the interests of the whole world, and that freedom can be maintained only if as wide an area of the high seas as possible is kept free. Too wide an extension of the territorial sea of each coastal State might, again, result in restricting access to hundreds of thousands of square miles of sea now available for the free use of each and every country in the world. Such a restriction would, in turn, lead to longer and less economical commercial runs to avoid possible harassment by a coastal State, to increased shipping costs, to reduced revenues to the producers of the products and to higher prices to the consumers.

It is for these reasons that last year we publicly suggested what we considered was a realistic compromise formula for reconciling the conflicting positions of those States which adhered to the three miles and those States which desired an extension of the territorial sea to twelve miles or more. Consistently, however, with our objective approach we must, we feel, examine the claim for a twelve-mile limit. We have to state, on such examination, that we find that the proposal for the extension of the territorial sea to twelve miles is certainly not unattractive for many of the reasons that have so far been advanced. We cannot, however, overlook the fact that twelve miles would appear to be in itself an arbitrary limit and could not claim any special sanctity. For instance, it might well have been fifteen or eighteen instead of twelve miles, despite the constantly quoted dictum from the report of the International Law Commission and the claim that that dictum meant that the Commission had accepted the correctness of a width of twelve miles for the territorial sea. We realize, however, that it can be urged that twelve miles has come to be recognized by a fairly large number of States, acting unilaterally no doubt, and that therefore they might claim it to have support in the practice of States. It is, however, necessary for us here at this Conference to reach a decision which will be uniform, and we lay a great deal of stress on the necessity for a more uniform rule and we shall deal with that aspect a little later on in our remarks. We want a uniform rule which will be also recognized and accepted as a rule of international law.

I have referred to the position taken by my delegation at the 1958 Conference. That position was based not only on the reasons advanced by us on that occasion but also on the important fact, as far as we are concerned, that our law, as at present, recognizes the territorial sea of six miles. That is our position at this Conference also. In the pursuance of our objective approach, however, we are prepared to examine very closely and critically the proposals that have been submitted to this Committee by the delegations of the Soviet Union, Mexico, Canada and the United States. We would like also to refer to the interesting suggestion which has been made by the representative of Cuba. I propose later to examine briefly these various proposals.

With regard to the fishing zone, which is generally a breadth of a further band of sea for purposes of fishing contiguous to the territorial sea, there are several considerations in this connexion which lead us to the view that a possible solution of this difficult problem lies in establishing a fishing zone separate from and contiguous to the territorial sea. This is the principle which was placed before us at the last Conference in 1958.

In our view, apart from the question of national security which requires exclusive jurisdiction over a certain territorial sea adjacent to its coast, a coastal State has certain rights in order to satisfy the growing needs of its people to the use and enjoyment of the fishery resources in the seas adjacent to them; we were glad in 1958 and we are glad today that that principle is gaining greater recognition. Sponsored by the Canadian delegation in 1958, 11/ it seems to be the one proposal in which there is almost unanimity, whether under the guise of the territorial sea of twelve miles or as a separate zone attached to a territorial sea of a lesser extent.

Those of us who two years ago voted for and signed the Convention relating to the continental shelf 12/ which granted the coastal States every right to the exploration and exploitation of the natural resources of the seabed and sub-soil of its coast can hardly refuse at this time to recognize the right of these same States to the control of the economic resources in a living form of their adjacent seas. We are of the opinion that this Conference cannot deprive coastal States of sovereignty over the natural resources of the waters over the seabeds. I do not wish at this stage to go into detail on the vital importance to States of the fishery resources adjacent to their coasts, which are necessary not only to their economy but to the very existence and livelihood of their population. This is recognized, as I said before. I wish only in this connexion to draw the attention of the Committee to our view that in the modern world the relationships of nations amongst themselves is no longer guided by the old anachronistic maxim of the survival of the fittest. The smaller, the weaker, the less fortunate nations cannot be allowed to have substantial portions of their economic resources taken away from them for no reason other than that some more powerful members of the family of nations are technically better equipped to remove larger and ever-increasing proportions of the economic resources from their smaller neighbours with ever-mounting swiftness.

11/ Official Records of the United Nations Conference on the Law of the Sea, vol. III, annexes, document A/CONF.13/C.1/L.77/Rev.1-3.

12/ Ibid., vol. II, annexes, document A/CONF.13/L.55.

The view that has been held by a large number of delegations that the territorial sea should extend to twelve miles or even more is, we believe, based on the assumption that there should be uncontrolled sovereignty for both defence and economic purposes over the territorial seas. This assumption may be considered to stem from an understandable confusion which appears to have arisen during the past years as a result of an omission by States to clarify exactly what is meant by the term "territorial sea". In the present age, with almost one hundred independent sovereign States participating in political, cultural and commercial exchanges throughout the world, the time has come to unravel some of the confusion which has been permitted to linger too long. It is for this reason that a clear distinction needs to be drawn between the territorial sea which would give the coastal States sovereign jurisdiction over matters of security, immigrantion, customs, sanitation, criminal jurisdiction, etc., on the one hand, and an exclusive fishing zone which would give the States the same control over fishing as they would have under a twelve-mile territorial sea, on the other hand.

A careful analysis of this view will show that the coastal States cannot derive any economic benefit from the adoption of a twelve-mile territorial sea which it will not be in a position to derive from the adoption of a more moderate territorial limit and an additional exclusive fishing zone.

We do not at this stage propose to specify any sets of figures, computations and combinations of which might eventually come to be accepted as the most equitable and reasonable solution. We do, however, at this stage wish to urge our view that the only possible arrangement satisfactory to most sovereign States here represented appears to lie in the direction of the recognition of a territorial sea and a further exclusive fishing zone. We also see in such an agreement the possibility of a simple and easy formula which has the merit of universal and uniform application. Matters such as the recognition of historic fishing rights or of adjustments between States which lie very close to each other, are matters which are undoubtedly very important, and their recognition will certainly enable us to find an acceptable solution. We cannot ignore them now in the hope that they can be dealt with later through bilateral agreements. After all, we must not overlook the fact that we are here framing rules of law which can be of universal and uniform applicability and which are based on realistic considerations. These rules must take into account the fact that they deal with a human factor, with lives of human beings and with the persons of human beings who have depended for their advancement and even for their bare living on the resources of the sea to which they had access from time immemorial. They must also take account of situations as they are and their close relation to these human beings.

It is, therefore, in this spirit that we would make our position at this Conference known to our fellow delegates that in fixing a territorial sea we should consider a reasonable limit, and in giving an additional fishing zone we should seek to safeguard the interests of those who had exercised fishing rights over a considerable period in the past.

These are our general views on both questions before us. We would, however, like to keep our mind open and seek in an objective way to find a common denominator to which substantial agreement may be reached. As I said before, while each one of us here undoubtedly has a special interest to promote, safeguard or support - so do we - we would like it remembered that agreements cannot be reached in that spirit, and that only an objective approach can bring about a successful conclusion to our work. What we have sought to do is to make it easier by stating our positions candidly and as clearly as possible.

It is in this spirit, in the spirit of an objective approach, that we have taken note of the definite proposals that have already been submitted to the Committee. We have given consideration to these also, and I propose now very briefly to discuss these proposals and perhaps reserve my right at a later stage to discuss them in greater detail when the resolutions themselves are to be discussed more fully.

I would in the first place refer to the proposal 13/ submitted by the representative of the Soviet Union. He has made it abundantly clear that the difference between the present proposal and the resolution submitted to the 1958 Conference by his delegation is a result of the consideration given to criticisms made of his former proposal. 14/ Undoubtedly the Soviet proposal is an attractive one in that it seeks to give the right to coastal States to adopt any limit between three and twelve miles for its territorial sea. It does not restrict all States to a specified limit. This flexibility is no doubt one of the attractions of the proposal. But, if I may venture to say, it might also be that this very flexibility is its greatest weakness.

We are here to try to develop a proposition of international law that should be uniform, precise and acceptable to all, if that were possible. The Soviet proposal, by its very flexibility, is likely to create a great deal of uncertainty which will establish different standards or norms according to the wishes of different countries. Whether this is good or bad is something which should be further considered at this Conference. As I said before, it is an attractive proposal which gives the different States the right to limit the territorial sea according to their needs and further consideration of this proposal is certainly necessary.

Of course, in making this criticism of the Soviet proposal, as we see it, it might be said that the United States 15/ and Canadian 16/ proposals are also

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

14/ Official Records of the United Nations Conference on the Law of the Sea, vol. III, annexes, document A/CONF.13/C.1/L.80.

15/ Official Records of the Second United Nations Conference on the Law of the Sea, annexes, document A/CONF.19/C.1/L.3.

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

subject to the same criticism because they also refer to the maximum - and I emphasize the word "maximum" - limit of six miles. Under that resolution also it is possible for different States to fix different limits up to a maximum of six miles. It is to be noted, however, that this uncertainty, created by the United States and Canadian proposal, is in respect of narrow limits, while the uncertainty created by the Soviet proposal is in respect of a wider territorial sea. The latter uncertainty therefore may seem to create more difficulty than the former; but in the opinion of my delegation both suggestions, for that reason, are open to objection.

A further attraction in the Soviet proposal is that if the territorial sea of twelve miles is accepted no further need arises to consider a separate fishing zone, as the coastal State would exercise sovereign rights including exclusive fishing rights within its territorial sea; and where the territorial sea fixed by a coastal State is less than twelve miles, then the Soviet proposal grants fishing rights up to a maximum of twelve miles on the bay side.

We have also studied with great interest the document, submitted by the Mexican delegation. 17/ We have since then considered carefully the statement made by the representative of Mexico. His proposal is certainly an original approach and an interesting one. The Mexican resolution also adopts the twelve-mile territorial sea, but the important point, and the difference, is that it seeks to encourage countries to support a lower limit for the territorial sea. Let me quote from the summary record of the statement by the representative of Mexico on 31 March:

> "In addition, the proposal outlines a procedure which might induce a number of States to fix the breadth of their territorial sea at not more than six miles." 18/

The sense of approach therefore is the idea of compensation through a wider extent of fishing area for a reduction in the territorial sea below a twelve-mile limit. In the light of some of my previous remarks, in the course of which I tried to indicate that the territorial sea of six miles would be sufficient to cover the security needs of a coastal State and the real needs were for a wider fishing zone, it would seem that the representative of Mexico is also following the same thought when he proposes to compensate those States which would be satisfied with a lower limit for the territorial sea by granting a more extensive fishing zone.

For instance, he proposes that a coastal State which fixes its territorial sea between three and six miles should be entitled to a total length of eighteen miles for its fishing zone. This is a point which we have to keep in mind in examining

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

18/ Ibid., 10th meeting, para. 7.

not only the Mexican proposal, but also all the proposals relating to the twelve-mile territorial sea.

The principal objection in the Mexican proposal, as it seems to us, is also the great degree of uncertainty that will arise from its adoption, and it is the same uncertainty as will result from any flexibility in regard to the territorial sea limit and is likely to create a great deal of confusion if different limits are fixed by different countries. The representative of Mexico made an interesting point when he referred to the large number of treaties his Government has entered into in which the limit of the territorial sea had been fixed at three marine leagues. I believe he referred to the fact that there were at least thirteen or more treaties of this kind.

Now two of these treaties are with the United States 19/ and the United Kingdom. 20/ I am sure that the representatives of these States will deal with this point and will clarify the position. We cannot make any definite comment on this important point because we have not seen these treaties ourselves. They have not been available to us and we do not know what all the provisions of these treaties are. It may be that the distance of three marine leagues may apply to particular problems and not to the whole question of the territorial sea. But it is something which is worth going into further, because if these two important States have entered into these bilateral treaties, acknowledging a territorial sea of nine miles, it would be difficult for them to reconcile that with the present position that the maximum of the territorial sea should not exceed six miles.

My delegation therefore is sure that there must be a satisfactory explanation and that the whole story is not contained in the fact that three marine leagues are mentioned in the treaty. We would like to know whether these apply, for instance, only to the rights of search for customs purposes or for detention in the case of enforcement of health conditions or any particular purpose, or whether they deal with the whole question of the territorial sea.

I propose not to make a few comments on the Canadian resolution which was very lucidly explained by the representative of Canada. The Conference will recall that we did support this resolution in 1958. 21/ But we indicated even

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19/ Treaty of Peace, Friendship, Limits and Settlement, signed at Guadalupe Hidalgo, 2 February 1848: Treaties and Conventions between the United States and Other Powers, 1706-1909, vol. 1, p. 1107.

20/ Treaty of Friendship, Commerce and Navigation, signed at Mexico, 27 November 1888: British and Foreign States Papers, vol. 79, 1887-1888, p. 25.

21/ Official Records of the United Nations Conference on the Law of the Sea, vol. III, annexes, document A/CONF.13/C.1/L.77/Rev.3.

then a preference for the resolution that was submitted in 1958 by the United States, 22/ which originally involved some changes and modifications of the Canadian proposal. Today too we have some objection to the Canadian proposal. It generally corresponds with our position, as I have already stated, namely, a preferance for the six-mile territorial sea and a separation of the territorial sea from the fishing zone, and we have agreed to subscribe to the need to give a larger fishing zone in the interest of the economy of certain countries.

Now the objection we have may be traced to the lack of realism in the resolution, because it fails to take account of the rights which have been exercised for many years by those countries which have been fishing in the area of sea that would be included in the extra six-mile zone which is to be added to the territorial sea of six miles. We ourselves do not think that it is fair or equitable that such rights should be summarily wiped out. That is a principal objection that we have. The international community should not formulate a rule of law which will summarily wipe out these existing rights which are as important and essential to some countries that exercise them as their elimination appears to be important to countries which claim more extensive areas. It is no doubt correct that coastal States should generally be entitled to a substantial area of sea adjacent to the ccast in which they should have exclusive fishing rights. We have no quarrel with that; we recognize it and support it. But we would at the same time hesitate to take part in any attempt to wipe out prescriptive rights which are recognized under most systems of law in other spheres and which are recognized in all legal systems as fair and equitable.

Some recognition of these rights therefore must be given at this Conference. It is not impossible to reconcile the rights of coastal States and the rights of those who have fished for long periods by resort to bilateral agreement, and it would not be difficult to find a means of making provision in any law that might be formulated for dealing with situations of this kind by resort to bilateral agreement. Such agreement can regulate fishing between these parties through limitations of quantity or species, as has been indicated in the United States proposal, or such other restrictions as may be mutually acceptable.

It semms to us therefore that this defect in the Canadian resolution should be corrected by the inclusion in the resolution of a clause which would call for negotiations of bilateral agreements intended to achieve the purposes indicated earlier. It will be noted that I am making a general suggestion only at this stage and at this time. I do hope, however, that in the attempt at reaching complete agreement amongst all parties concerned, it may be possible to go into the question of drafting in detail such a clause which would be incorporated at a later stage.

22/ Ibid., vol. II, annexes, document A/CONF.13/L.29.

The revised version of the resolution now submitted by the United States delegation is, unfortunately, in some parts unsatisfactory to my delegation. We supported it wholeheartedly in 1958 and we had hoped to support the same resolution wholeheartedly again this year. In 1958 we felt that the resolution submitted to that Conference was a realistic approach and a reasonable attempt to bring about a compromise between the rights of coastal States and historic rights of other States. That is why we supported that resolution then. As is well known, it was the only resolution which came nearest to the required two-thirds majority. This is a clear indication that the large majority of States represented at that Conference acknowledged the fairness of that approach, because it sought to meet the needs of both sides.

We therefore regret very much that the United States delegation has now changed its position and has submitted a resolution which seeks to modify the rights of historic users. The representative of the United States has told us very clearly the reason for that change. The United States apparently has not altered its original view itself, but has decided to yield to adverse criticism with a view to bringing about what they consider a further compromise that might lead to a satisfactory solution. We recognize this fully, but we must be cautious that a compromise of this kind should not be the cause of an almost total denial of accrued and important rights of others.

The present proposal for that reason is unacceptable to my delegation, because while recognizing the rights of historic users, it seeks to limit these rights. It may be argued that the limitation has to be made in favour of coastal States, some of which no doubt have to depend exclusively on fishing for the maintenance of their economy. But it is nevertheless a denial of accrued rights of others. Any necessary adjustment of these two positions should be given effect only by mutual understanding and bilateral agreement. We here have no right to internationally recognize historic users and, at the same time, cut off those very rights without leaving any opportunity of bilateral or multilateral discussion and agreement.

This is the reason why we should like to write into any convention the requirement of bilateral or multilateral negctiation regarding the perspective rights of coastal States and the historic user. The modification I mentioned earlier refers to the limitation of the rights of historic users to "the same group of species as were taken therein during the past period to an extent not exceeding in any year the annual average level of fishing carried on in the outer zone during the said period".

Quite apart from the objections I stated earlier, there seems to be a further objection on practical grounds. It would appear to us to be extremely difficult, if not impossible, to exercise any sort of control to give effect to such a requirement. I am sure that there are very few countries, if any, which have kept statistics that could show separately the catch within the zone of twelve miles and outside that zone, which are essential requirements to give effect to

the United States proposal. There are other practical difficulties which we can foresee, but which I shall not refer to at this stage owing to a limitation of time. I do not want to take up too much time of this Committee. It is however to be noted that other suggestions have been made in connexion with the United States proposal which seeks to limit further the rights of historic users. They go even beyond the limitation imposed or sought to be imposed by the United States delegation by suggesting that the annual average level of fishing and the fishing in the special species should be limited to a certain period of time only.

In other words, the idea is to give these historic users time to make other arrangements. This certainly would be a greater denial of these accrued rights than even the limitation sought to be imposed by the United States, and for that reason should, in our opinion, be resisted.

An interesting suggestion was also made in the course of the statement of the representative of Cuba. In a very reasoned and, if I may presume to say so, a refreshing approach to the relative fishing rights of coastal and non-coastal States in sea areas adjacent to the territorial sea, the representative of Cuba suggested a possible reconciliation of conflicting interests, on an equitable basis, by recourse to a concept of "preferential" as opposed to "exclusive" rights, to be conferred upon the coastal States in the matter of fishing. It is our belief also that the special interests of a coastal State in the living resources of the sea would rarely justify the complete exclusion of fishing States who have exercised the right to fish for long periods.

We also recognize the special interest of coastal States in safeguarding their fishery, and we can foresee situations where a coastal State could with justification restrict foreign fishermen in the interest of conservation of these resources. However, in a matter where the principal difficulty arises from the conflict of interest between the rights of the coastal State and the rights of fishing States, we see in a recognition of a preferential system a practical solution which would help towards agreement, with the least harm to either group of States. Perhaps the representative of Cuba will submit a definite proposal embodying the views which he has so clearly put before us in the course of the debate. Such an attempt might be a further means of finding a new solution, a newer approach, from a different concept, to reconcile the differences.

It may not yield any result at the end, but my delegation believes that we should pursue all avenues in the search for the most equitable common agreement that we can find. It is no doubt possible by weighted numbers or by power to obtain a majority of votes for a certain position. But our appeal to this Conference is instead to search for an equitable compromise, and for this purpose we require examining and following up all proposals that are submitted to this Conference.

These are the comments that we have to make at this stage on the various proposals now before us. It is possible that other resolutions will be submitted in the course of our deliberations. It is our intention, as I have said before, to pay the closest attention to all proposals and ideas and to join in a common effort to reach a satisfactory solution. We still keep an open mind on all these

proposals and we hope that we can, under your guidance, Mr. Chairman, and in an atmosphere of reasonableness and good will, join with all others in searching for the common denominator, and we hope we will succeed in reaching final agreement at this Conference.