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Sixth Meeting

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Sr. CARMONA (Venezuela): Antes de pronunciar mi discurso no había tenido conocimiento de la ausencia del Presidente Sr. Correa, que con tanto acierto ha dirigido nuestros debates. Me permito recordarle con verdadera complacencia y señalar igualmente la felicitación que ahora le dirijo.

El largo trecho que hemos recorrido en relativamente poco tiempo en la codificación del Derecho del Mar demuestra que el tema está maduro para la coordinación de los principios básicos y de los esfuerzos en el sentido de edificar, sobre bases sólidas, un nuevo Derecho Marítimo que responda a las necesidades y las relaciones de los Estados y los pueblos de hoy, prescindiendo de ideas o posiciones arcaicas de predominio o imposición que repugnan al sentimiento de la época en que vivimos. El principio clásico que todos tenemos en la mente y que, ciertamente, no cambiará, es el del respeto, en lo posible, a la libertad de alta mar y a la navegación internacional; pero el desarrollo de los pueblos, la independencia de numerosos Estados antes sujetos a tutela o coloniaje, la mejor concepción de los intereses y deberes de cada agrupación humana en la comunidad general, han proyectado un chorro de intensa luz en el campo del Derecho Marítimo e imponen soluciones diferentes de las que los Estados propugnaban hasta tiempos relativamente cercanos y demostrado que la mayor parte de las teorías de los grandes internacionalistas se han desmoronado por su propio peso, en busca de fórmulas más humanas y justas, más adaptadas a la realidad de los hechos y a las necesidades de la vida moderna, encabezando una marcha que se hace cada día más imperiosa y rápida hacia el porvenir.

Como se ha dicho aquí en varias ocasiones, la Conferencia sobre el Derecho del Mar de 1958, a la cual asistió el mayor número de Estados que se recuerda en la historia humana (86), tuvo como base los trabajos admirablemente bien concebidos de la Comisión de Derecho Internacional de las Naciones Unidas durante diez años. Los que asistimos a esa Conferencia, recordamos aún vivamente el forcejeo durante casi tres meses de las doctrinas y las posiciones políticas, en un esfuerzo muy valioso para encontrar fórmulas aceptables para todos o para la gran mayoría de los Estados. Como consecuencia de esa labor, se adoptaron y firmaron cuatro Convenciones: Convención sobre el Mar Territorial y la Zona Contigua; Convención sobre la Alta Mar; Convención sobre Pesca y Conservación de los Recursos Vivos de la Alta Mar, y Convención sobre la Plataforma Continental 1/. Tales instrumentos constituyen un verdadero Código de Derecho Marítimo, con la sola excepción de algunas cuestiones que no pudieron ser resueltas entonces en las deliberaciones de esta ciudad y sobre las cuales volveré más luego.

1/ Documentos Oficiales de la Conferencia de las Naciones Unidas sobre el Derecho del Mar, vol. II, anexos, documentos A/CONF.13/L.52, A/CONF.13/L.53, A/CONF.13/L.54 y A/CONF.13/L.55.

Venezuela ha atribuido tal importancia a esos instrumentos que su Gobierno consideró oportuno tratar de ponerlos en acción a la mayor brevedad posible, dando así un ejemplo de colaboración fecunda en el campo universal. Para la fecha, las Convenciones de Ginebra sobre la Alta Mar y la Plataforma Continental han sido aprobadas con declaraciones hechas para la época de su firma, por la Cámara de Diputados, y están en consideración del Senado, en cuyo seno se encuentran en una etapa muy avanzada. Por otra parte, la misma Cámara de Diputados aprobó las Convenciones sobre Mar Territorial y Zona Contigua y la relativa a la Pesca en Alta Mar, las cuales pasaron a la Cámara del Senado en donde se espera el resultado de la presente Conferencia para llegar a las decisiones finales. De ahí la importancia que tiene esta reunión para nosotros porque de ella dependerá la suerte final de esas dos Convenciones. Tenemos la esperanza de que en breve tiempo todos los instrumentos firmados en Ginebra queden ratificados por Venezuela.

Según manifestó aquí el Sr. Stavropoulos, la Convención sobre Mar Territorial y Zona Contigua ha sido firmada hasta ahora por 44 Estados; la Convención sobre la Alta Mar por 49; la relativa a Pesca y Conservación de los Recursos Vivos del Mar, por 37, y la relacionada con la Plataforma Continental, por 48. El Reino Unido acaba de depositar la ratificación de las Convenciones sobre Alta Mar y sobre Pesca y cree poder depositar la Convención sobre Plataforma Continental a breve lapso. Afganistán ratificó la Convención sobre Mar Territorial y Zona Contigua y, según afirma el Representante del Secretario General de las Naciones Unidas, ya muchos otros Estados "han iniciado los trámites necesarios para obtener la aprobación parlamentaria para la ratificación de una o más de las Convenciones y cabe presumir que si la presente Conferencia logra un acuerdo, otros Estados seguirán el ejemplo de los que ya han ratificado las Convenciones" 2/.

En esta marcha progresiva del derecho internacional marítimo, han quedado dos cuestiones de sumo interés que la Conferencia de 1958 no pudo resolver: la anchura del mar territorial y la zona contigua, y el alcance de los derechos de pesca de los Estados ribereños. La propia Conferencia aprobó una resolución acordando que se solicitara de las Naciones Unidas la reunión de una segunda Conferencia para tratar esos problemas. La Asamblea General de las Naciones Unidas en su decimotercer período de sesiones convocó, por resolución No. 1307, de 11 de diciembre de 1958, esta nueva Asamblea, en que habrán de debatirse los dos problemas pendientes para encontrar fórmulas que permitan poner fin a la dura controversia y a la confusión que actualmente existe en esa materia.

Por lo que se refiere a la extensión del mar territorial, debe recordarse que la Ley sobre Mar Territorial, Plataforma Continental, Protección de la Pesca y Espacio Aéreo, vigente en Venezuela, establece, en su artículo primero, que el mar territorial de la República es de una anchura de 22 kilómetros y 224 metros (equivalentes a 12 millas náuticas), medidos a partir de las líneas de base a que se refiere el artículo segundo de la misma. En esa zona la soberanía nacional

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2/ Documentos Oficiales de la Segunda Conferencia de las Naciones Unidas sobre el Derecho del Mar, primera sesión plenaria, párr. 5.

se ejerce sobre las aguas, el suelo, el subsuelo y los recursos que en ellos se encuentren. En caso de que el límite establecido en esa forma colinda con aguas territoriales extranjeras, se resolverá la cuestión mediante acuerdos u otros medios reconocidos por el derecho internacional. Por otra parte, el artículo 3 establece una zona contigua de 5 kilómetros y 556 metros (3 millas náuticas) para fines de vigilancia y policía marítima, para seguridad de la nación y para resguardar los intereses de ésta. En esa zona no hay soberanía ni derechos de pesca exclusivos, y no se incluye tampoco el espacio aéreo.

Cuando se redactó esa ley, cuidadosamente preparada por Comisiones Técnicas, se tuvieron especialmente en cuenta las conclusiones presentadas por la Comisión de Codificación del Derecho Internacional de las Naciones Unidas y los últimos progresos de la ciencia en esa materia, adaptándose a sus inspiraciones. No hay nada que pueda considerarse como acción brusca o excesiva del ribereño; y hasta ahora no se ha producido ninguna clase de dificultades internacionales en su aplicación práctica. Ni el Congreso Nacional de Venezuela ni el Poder Ejecutivo tienen el menor propósito de cambiar este principio que consideran justo y adecuado y en el que mi país coincide con un gran número de Estados que profesan ideas avanzadas y principios progresivos en materia de mar territorial.

Como se ha dicho ya aquí y en la Conferencia de 1958, la regla de tres millas náuticas como anchura del mar territorial es arbitraria y anacrónica, y de ninguna manera cubre las necesidades actuales de los Estados en vías de evolución y de progreso y la defensa de sus intereses políticos y económicos. Fue ideada en tiempos muy antiguos por los grandes países marítimos para poder conservar toda amplitud de acción en el mar, aun en las cercanías de las costas de países extranjeros y con peligro de su seguridad y de la defensa de sus riquezas. En el mundo de hoy, la regla de las tres millas, dígase lo que se quiera, parece más bien un dinosauro atravesando una ciudad archimoderna. Ya en 1958 se le cantó en esta misma sala el último responso. Sólo queda que enterrarla antes de que los malos olores de la putrefacción vicien el ambiente y nos envenenen a todos.

Algunos países muy conocidos, al comprender esta situación evidente, han buscado una fórmula para salvar de algún modo lo que pueda salvarse del antiguo principio, bien extendiendo el mar territorial a seis millas náuticas, con una zona contigua exclusiva para los efectos de la pesca de otras seis millas (propuesta canadiense) 3/; o bien, adoptando una fórmula semejante pero más limitada en ciertos aspectos con reconocimiento de derechos históricos (propuesta de los Estados Unidos) 4/. Este último país ha dicho en esta tribuna que los Estados Unidos prefieren la regla de tres millas; y que sólo en circunstancias semejantes a las actuales y ante el avance de la doctrina de ampliación a 12 millas, están dispuestos aceptar una fórmula transaccional, o sea de compromiso. Por lo que se refiere al Canadá, conviene recordar que según el cuadro sinóptico para diciembre de 1959 publicado por la Secretaría de las Naciones Unidas 5/, aparece

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3/ Documentos Oficiales de la Segunda Conferencia de las Naciones Unidas sobre el Derecho del Mar, anexos, documento A/CONF.19/C.1/L.4.

4/ Ibid., documento A/CONF.19/C.1/L.3.

5/ Ibid., documento A/CONF.19/4.

ya una ley de 1952 que establece una anchura de 12 millas para la seguridad y para la pesca, por lo cual puede verse que, en realidad, nada está cediendo al hacer su propuesta de 1958 y la actual.

La verdad es clara y rotunda. Un gran número de países que forman mayoría absoluta, por lo menos, defienden el principio de 12 millas náuticas como extensión del mar territorial. En 1958, la votación en Comisión resultó empatada con numerosas abstenciones, cuando se votó la propuesta indio-mexicana 6/. En cambio, la propuesta sueca de tres millas demostró la absoluta impracticabilidad de esa fórmula, recibiendo 49 votos en contra, solamente 16 a favor y 14 abstenciones 7/. Era la muerte de que ya se ha hablado. La primera propuesta de los Estados Unidos en 1958 en el sentido transaccional fue derrotada por 38 votos en contra, 36 a favor y 9 abstenciones 8/. La nueva propuesta de los Estados Unidos no pudo tampoco obtener la mayoría de dos tercios, alcanzando sólo 45 a favor, 33 en contra y 7 abstenciones 9/. La contrapropuesta de 12 millas, llamada multilateral, obtuvo 39 votos a favor, 38 en contra y 8 abstenciones 10/. Había mayoría absoluta por las 12 millas. El último esfuerzo para buscar una transacción lo hizo el Canadá en su ya conocida propuesta, sobre la base de seis más seis millas, y obtuvo 48 votos en contra, solamente 11 en favor y 23 abstenciones 11/.

De ese breve resumen es fácil ver que la mal llamada tesis transaccional no satisface en modo alguno la mayoría de los Estados, a pesar de los esfuerzos hechos en favor de ella; y que una cantidad tan importante como numerosa de Estados no está dispuesta a aceptar fórmulas medias en una materia que se considera vital para la vida internacional contemporánea. La doctrina de las 12 millas marcha inexorablemente hacia el triunfo, que será hoy o mañana, definitivo y rotundo.

Varias objeciones se han opuesto a esta última tesis. Se dice que al adoptarse una fórmula flexible de tres a doce millas, todos los Estados se pronunciarán en la práctica por la última cifra. En realidad, ya se sabe que muchos Estados, por razones circunstanciales, no desean ampliar su mar territorial, y la aplicación o no aplicación del principio queda a voluntad de cada uno. Recuérdese que en la actualidad nadie sabe ni conoce qué principio rige y ello crea una confusión mucho mayor por cuanto no hay regla fija en Derecho consuetudinario.

6/ Documentos Oficiales de la Conferencia de las Naciones Unidas sobre el Derecho del Mar, vol. III, anexos, documento A/CONF.13/C.1/L.79, y 56a. sesión, párr. 36.

7/ Ibid., vol. III, anexos, documento A/CONF.13/C.1/L.4, y 57a. sesión, párr. 6.

8/ Ibid., vol. III, anexos, documento A/CONF.13/C.1/L.159/Rev.2, y 57a. sesión, párr. 12.

9/ Ibid., vol. II, anexos, documento A/CONF.13/L.29 y 14a. sesión plenaria, párr. 60.

10/ Ibid., vol. II, anexos, documento A/CONF.13/L.34 y 14a. sesión plenaria, párr. 61.

11/ Ibid., vol. III, anexos, documento A/CONF.13/C.1/L.77/Rev.3, y 56a. sesión, párr. 27.

Se dice que la extensión del mar territorial implica un atentado contra la libertad de navegación y la libertad de alta mar. Nada más falso. La adopción de un principio general o casi general sólo facilitará la aplicación práctica de la libertad de navegación. Además, las Convenciones de 1958 garantizan el paso inocente en el mar territorial, salvo casos muy extraordinarios, y obligan asimismo a no suspender el paso inocente de buques extranjeros en los estrechos que se utilizan para la navegación internacional entre una parte de la alta mar y otra parte de la alta mar, o en el mar territorial de un Estado extranjero (artículo 16, párrafo 4 de la Convención sobre el Mar Territorial y la Zona Contigua) 12/ asegurando así la navegación libre.

Se alega que la extensión del mar territorial a 12 millas crea obstáculos en la utilización del espacio aéreo. El argumento es igualmente erróneo. El Convenio relativo al Tránsito de los Servicios Aéreos Internacionales de 7 de diciembre de 1944, suscrito en Chicago 13/, permite el tránsito de las aeronaves sobre el territorio de otros Estados, sin aterrizar o con aterrizaje para fines no comerciales (artículo 1); y la Convención sobre Aviación Civil Internacional firmada igualmente en Chicago 14/, en su artículo 5, reconoce el derecho de vuelo sin itinerario fijo a través o en el territorio de otro Estado, con escalas para fines no comerciales, sin permiso previo. Solamente las líneas que hacen vuelos con itinerario fijo están sujetas a los convenios bilaterales de aviación que fijan las rutas, frecuencia, y capacidad de vuelo; y a falta de éstos, se les somete a permiso previo para operaciones comerciales. Esta regla es universal y se aplica lo mismo al espacio aéreo que cubre la tierra firme y el mar territorial. Ninguna influencia tiene la extensión de éste en el tratamiento legal, aunque se cambie esta extensión, y así se ha aprobado por los numerosos países que actualmente aplican la regla de 12 millas.

Se ha dicho también, como argumento "aquiles", que la extensión del mar territorial a 12 millas puede comprometer la seguridad o defensa común en casos de emergencia o de guerra. Se afirma que sería fácil a las grandes Potencias violar la neutralidad de países pequeños haciendo navegar submarinos bajo aguas territoriales, protegidos por la neutralidad y exentos de peligros de ataque. Desde luego, hay que recordar que si, por desgracia, llega a producirse una tercera guerra mundial, no habrá ocasión ni oportunidad de pensar en neutrales y todos tendrán que afiliarse en uno u otro lado. La existencia de armamentos y proyectiles destinados a actuar a enormes distancias hacen sonreir ante la idea de que puedan cruzarse aguas neutrales para fines de ataque, cuando bastan los cohetes de gran radio de acción para producir incalculables catástrofes. Recuérdese también que el derecho del mar que se está creando se refiere al tiempo

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

13/ United Nations Treaty Series, vol. 84, pág. 390.

14/ Ibid., vol. 15, pág. 296.

de paz y no al de guerra, como bien lo explicó la Comisión de Derecho Internacional de la ONU 15/. No hay duda de que los gastos de defensa y de vigilancia de los diferentes países que adopten la regla de 12 millas aumentarán en forma apreciable; y es por ello que se deja a cada uno la libertad de escoger entre 3 y 12 millas, según sus intereses.

Al propugnar, por consiguiente, la necesidad de dejar a los Estados la libertad de extender su mar territorial hasta 12 millas, Venezuela apoyará toda propuesta adecuada que al respecto se formule en forma moderada y equitativa.

Queda solamente un punto por tratar y que requerirá más detenida consideración en el curso de la presente Conferencia.

No hay duda de que uno de los intereses más importantes y vitales que los Estados tienen que defender en derecho del mar, es el relativo a la utilización y preservación de los recursos naturales del mismo, o sea, la pesca en sus diversas formas. El esfuerzo hecho en 1958 para reglamentar en una forma liberal y adecuada el derecho de pesca en las zonas marítimas cercanas a las costas de un ribereño para asegurar la alimentación y el debido desarrollo de los pueblos que viven principalmente de los recursos marinos, es en extremo importante. Lo es también la parte relativa a la protección de los recursos naturales y del mar en las aguas de alta mar, para beneficio de la humanidad y la eliminación del grave peligro que envuelve la destrucción inmisericorde y desordenada de los bancos de pesca, que antes se creían inagotables. Sin embargo, numerosos países no creen muchas veces con razón, que se haya logrado de una vez el resultado apetecido y desean encontrar fórmulas más amplias para la protección de los derechos del ribereño y de los recursos vivos del mar lejos de las costas. Venezuela ve con profundo interés y simpatía los estudios que se vienen practicando al respecto y espera que sean presentadas conclusiones o propuestas, para proceder a estudiarlas con espíritu amplio y serena comprensión de los problemas envueltos. En este sentido se complacerá en apoyar cualquier propuesta que tienda a asegurar los derechos del ribereño sin afectar el fondo de la libertad de la alta mar y el usufructo adecuado de sus riquezas.

Es con este espíritu que la delegación venezolana habrá de colaborar con el mayor esfuerzo en el seno de esta Conferencia.

15/ Documentos Oficiales de la Asamblea General, undécimo período de sesiones, Suplemento No. 9, párr. 32.

Mr. HARE (United Kingdom of Great Britain and Northern Ireland): This is the first time I have spoken at a Law of the Sea Conference. Most of you are veterans of the last Conference.

But one thing has struck me from the very moment of my arrival - that is, the friendliness that exists here. I should like to mention in particular our President, H.R.H. Prince Wan; H.E. Ambassador Correa; you, Mr. Chairman; and Dr. Glaser, our rapporteur. I warmly congratulate you all on your election. Thanks to the very real kindness not only of you gentlemen, but also of all the other delegates I have met, I think I can now truly say I feel at home.

There are among us many lawyers and many diplomats. But, as a politician, I think I can justly make this point: there is a danger that a purely neat and tidy legal solution can ignore real hardship to human beings. I know it is the wish of us all to avoid this. Laws are made for the convenience of man and not vice versa. The problems of human hardship and human rights are the special concern of the United Nations. I think it is very proper that we should remember this.

The fact that various unilateral claims have been made regarding the breadth of the territorial sea and fishery limits shows the need for the adoption of a definite rule of law on these matters - a rule of law which will be respected by all States. It was because the United Kingdom wished to reach agreement upon such a rule that we supported the final United States proposal at the first Law of the Sea Conference, 16/ in spite of the heavy sacrifices that would have been involved to us. We were then seeking a solution - just as we still are now - which would meet the needs of both coastal States and fishing States. In order that the rule of law may prevail, we sincerely share the hopes expressed by many speakers that this Conference should reach agreement.

The achievements of the 1958 Conference were very considerable, but no agreement, as we know, was reached on the two questions - the breadth of the territorial sea and fishery limits. The United Kingdom Government has therefore continued to regard the three-mile limit as the only breadth recognized under international law. This remains our view of the legal position as it exists at present. We cannot accept, in the absence of international agreement, that unilateral claims to wider limits have any general validity. I do want to emphasize again these vital words - "in the absence of international agreement".

In view of certain things that have been said, for instance in paragraph 1 (b) of the commentary to the Mexican proposal, 17/ I must emphasize that the United Kingdom does not share the view that the International Law Commission recognized that any breadth of the territorial sea not exceeding twelve miles is valid in international law. Now, I am no lawyer, so I do not propose to state

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16/ Official records of the United Nations Conference on the Law of the Sea, vol. II, annexes, document A/CONF.13/L.29, and 14th plenary meeting, para. 60.

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

in detail the arguments which we consider conclusive. But I am not speaking out of ignorance. The advice of Sir Gerald Fitzmaurice, my able deputy, has been, of course, available to me. Most of those who have known him over the years must certainly respect his judgement on these matters. We have also had the clear and convincing statement made by Mr. Dean, the leader of the United States delegation, which was made last Thursday and arrived at exactly the same conclusion. Surely there can be no further doubt on this matter - that the proposal to hold this Conference would be meaningless if international law had already recognized the validity of claims not exceeding twelve miles. We should not be here if that were the case. The suggestion that the Commission intended to imply that this was the position is, in my submission, a complete misinterpretation of its attitude.

Now, let us have a look at the problem before us. In seeking a solution each one of us must be ready to look beyond our purely national interests. We must be prepared to find a solution which pays regard to the interests of other States as well as our own. If we do not do this, we cannot expect agreement. The alternative is chaos.

My Government has sought to understand the reasons for claims advanced by some other States for wider territorial seas and fishing limits. Some, I think, unmindful of the needs of merchant shipping, profess fears on security grounds. Others are concerned for their food supply or their livelihood from the fisheries close to their coasts. I should like to examine these fears more closely.

I should like to turn first to the question of security. Some States seem to feel that their national security would be increased if they had wide territorial waters. Naturally my Government understands this concern about security. But surely it is based on a misconception. A wide belt of waters round our shores is not in fact a suit of armour that will isolate us from danger. We all know this. On the contrary, in the conditions of modern warfare a wide territorial limit gives no added protection from attack. Such a limit is difficult and costly to police and control. It becomes hard to fix precisely the position of ships at sea. This can only increase the likelihood of incidents and so jeopardize the safety of coastal States.

Next we come to the merchant shipping aspect of the problem. There should be, I would have thought, two essential aims here: first, to reach agreement on a uniform breadth of territorial sea; and second, in determining that breadth, to make sure that it is broad enough to satisfy those who cannot bring themselves to accept a three-mile limit, but yet not so broad as seriously to increase the risk of interference with the merchant shipping of the world.

On this, I should like to refer to the Mexican 18/ and Soviet Union 19/ proposals, which would entitle each State to fix the breadth of its territorial sea at any distance up to twelve nautical miles. It has been said that this

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

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

would be fair to all and harmful to none. As we know, this is not so. It does not help that countries need not claim the maximum. What really matters is that they can, if they so wish, claim as much as twelve miles. This, in my submission, is bound to cause confusion.

Let us look for a moment at what the consequences of an extension to twelve miles would be in reality. The life of a seaman, although fortunately less hard than it used to be, is still a dangerous one. Many customary shipping routes run along coasts or around headlands. This is not merely to save distance or to make navigation easier. It is also for shelter. We must not expose seamen to greater danger by pushing them further away from places of shelter, and from effective navigational aids.

I know that some people argue that these difficulties would not arise, because the right of innocent passage has already been recognized. But experience shows that there is a temptation to interfere with merchant shipping. Notwithstanding the right of innocent passage, reasons for interference are not always difficult to find. To avoid such risks, ships may find it necessary to make costly, lengthy and possibly dangerous detours.

These elements of uncertainty and risk, which would flow from an extension of the territorial sea to twelve miles, cannot be ignored. Shipping is an expensive business in terms of capital and operating costs - even when everything is running smoothly. I am not thinking only of the large maritime powers. Many nations are now for the first time establishing merchant fleets of their own. Others will wish to do so in future. It would, I think, be unwise to make things more difficult for them.

Can we not all agree that the well-being and future development of all countries are dependent on the unfettered movement of world shipping? At a time when we are all seeking to remove artificial trade barriers between nations, to lower tariffs, and to increase the flow of trade, why should we seek to narrow the freedom of movement on the high seas?

I now want to turn to the problems of fishing and fishery limits.

The first point I must make is that some countries advance the requirements of fishery conservation as a reason for claiming wider fishery limits. I do not think this is a good argument.

One of the achievements of the 1958 Conference was to resolve the conservation problem, by means of the Convention on Fishing and Conservation 20/ which was adopted by a two-thirds majority. Rightly, the merits of this Convention have been generally acclaimed. It provides the means by which the fishery resources of the world can be properly conserved, so that the best possible use may be made of them. Recognizing the special interest of the coastal State in conservation,

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

the Convention gives that State the initiative in conserving fishery resources, not only just around its coasts, but on the adjacent high seas. Any measures which a coastal State prescribes must conform to the scientific principles of conservation and must aim at maximizing the yield of fisheries over the years. Fishermen of all countries are required to observe those measures.

Here then, truly, we have got one rule for all and discrimination against none.

Therefore, with such a balanced, rational and sensible arrangement, there is no occasion for conservation to be put forward for extension of fishery limits, for the very good reason that the coastal States themselves will be able to ensure that all conservation needs are met, and that the fisheries off their shores are not harmed by others.

If, then, conservation is not at issue, what lies behind the argument we are having about the breadth of fishery limits? Much of the argument is about the problem of sharing the available catch. Of course, this is a matter of great economic importance. It no doubt accounts for the view, which is held by some, that every country should be entitled to twelve miles of exclusive fishing off its own coast, while fishermen from elsewhere should stay in their own home waters, or at any rate well out to sea. But we must remember that this is not simply a question of food: it also involves the livelihood of fishermen of many nations.

Before reaching a conclusion on this kind of argument, I must ask delegates here to consider three questions. Firstly, why do some countries engage in what may be termed distant-water fishing? Secondly, if that were stopped or curtailed, what would be the effect upon the world's fish food supply? Thirdly, flowing from the second question, what would be the economic consequences for the fishery and the coastal States?

The first question I asked you to consider was why some countries engage in distant-water fishing. I think that geography and natural circumstances have a lot to do with the answer. Some of us have large, and others small, populations. Some have little or no sea coast, and others have much. Some have large fish stocks close to their shores, others have not. The size of the fish stocks in the various coastal waters is not proportionate to the size of the national populations. This is not by any means because the fish stocks have been exhausted. As we know, some parts of the seas are naturally richer in fish than others. In general, fish are most numerous and easiest to catch in the shallower waters nearer to the shore than they are out in the deep waters of the oceans. These, I think, are the reasons why some countries have to go farther afield than others to catch the fish they need.

I should like to illustrate these points from what happens in my own part of the world. The North Sea, which lies between many European countries, has been a traditional fishing ground for centuries. More fish are caught there today than ever in the past, but, even so, not enough to meet anything like the

full needs of the very large populations of Europe. And so, for a long time past, the fishermen have had to go to more distant parts of the North Atlantic.

Distant-water fishing of this kind has nothing to do with imperialism or colonialism. It is a matter of people who want food confronting the facts of geography. It is not only the older nations that are affected, or, indeed, that behave differently from the others. Among the newer nations, there are those whose fishermen follow their trade nearer to the coasts of other countries than of their own. We must not under-estimate the number of these nations.

Now let us examine for a moment what would be the effects of an exclusive twelve-mile fishery zone, especially on world food supplies. Obviously, distant-water fishing would be greatly diminished if a twelve-mile fishing limit became the world rule. Much of this fishing takes place within twelve miles because the fish are close to the shore. It is often assumed, as if it were a self-evident fact, that if a coastal State were to establish a twelve-mile fishery limit, then it would automatically take the fish which the fishermen of other countries would no longer be able to catch. Of course, a coastal State could increase its catch if it had a developed fishing industry of its own; and in many cases this is what is in fact happening now, even though other countries continue to fish in its waters. But there are other States off whose shores fishing by other countries takes place, with rich resources of fish near their coasts but only sparse populations. Indeed, there are areas with fish where there is no human population at all. In cases of this sort, the fishing resources could not be fully used. So the extension of coastal fishery jurisdiction over large additional areas of sea must reduce the world's total fish catch, unless provision is made for fishing by other countries to be continued there. Without a provision of this sort many countries would be deprived of an important part of their food supply. Surely this cannot be reasonable.

Now, what would be the economic consequences of all this? I hope I have shown that generally speaking the coastal States would not fully gain what the distant-water fishing States must lose.

But the Conference must be under no illusions as to how exceedingly severe this loss to the fishing States would be. It is a mistake to suppose that the fishing States are all rich and large countries. Many of them are quite small and by no means wealthy. For many of them distant-water fishing provides staple food for their people which cannot easily be replaced. Moreover, it is not simply a matter of poor and not so poor countries. It is far more complex than that. We in the United Kingdom are not a poor country; yet we have a very large population on a small island. In fact we are the largest importer of food in the world. We have, however, been able to supply ourselves with most of the fish we eat, thanks largely to our distant-water fishermen. They bring home rather more than half our total catch of fish. The loss of that fish, or a great part of it, would be a cruel blow to our economy and to our food supply; and the impact upon our fishing industry would be a major disaster.

The same applies, I think, to many other nations. Surely it is not right to argue that merely because these nations are in a minority this United Nations Conference should condone an injustice. This in fact was the conclusion that I had to draw from the eloquent and forceful speech made by my good friend, Mr. Drew, the representative of Canada. And it really is no use saying that no injustice will be created, on the grounds that it will be easy for States to make bilateral or multilateral agreements. Under the proposals put forward by Canada, Mexico and the Soviet Union, 21/ States would have an unqualified right under international law to exclusive fishery jurisdiction over a coastal belt twelve miles wide. Any continuance of distant-water fishing by other States within that belt would be entirely subject to the grace and favour of the coastal States.

We have, in the United Kingdom, large numbers of fishermen who earn their living by distant-water fishing. Counting them, their families and the shore workers who are dependent upon them, there is a multitude of people whose livelihood would suffer by any serious curtailment of distant-water fishing. This is also true of many other countries. The hardship to individuals would be just the same whether they were citizens of large or of small States. It cannot be just or right that fishing States should have to face economic consequences of this magnitude.

Having said this, I hope it will not be thought that the United Kingdom is blind to the needs of the coastal States. Far from it. We believe that justice must be done at this Conference to the coastal States. We are ready to accept a new fishery limits rule which will give the coastal States and their fishing communities larger areas of what we have always regarded as the high seas.

But although we are prepared to agree to a new rule more favourable to the coastal State, it would not be just if the distant-water fishermen of the world were then to be prevented from continuing to seek their livelihood where they have fished for so long. Yet, as I have said, three of the proposals before the Committee would have precisely that effect. By a stroke of the pen - overnight as it were - great numbers of people, in different parts of the world, would be thrown out of work; industries which, in some cases for centuries past, have been geared to distant-water fishing would be crippled; and large populations would suffer an immediate and drastic reduction in their total fish food supply.

The Canadian proposal does indeed provide for a moderate and uniform breadth of the territorial sea, and Mr. Drew was extremely clear and convincing on this.

But the proposal of the Soviet Union is, I think, as indefinite on the territorial sea as it is definite on fishery limits. The Mexican proposal has the same defect and adds another by making the extent of fishery limits equally

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21/ Official records of the Second United Nations Conference on the Law of the Sea, annexes, documents A/CONF.19/C.1/L.4, A/CONF.19/C.1/L.2 and A/CONF.19/C.1/L.1.

indefinite and allowing them to be extended even beyond twelve miles - as a kind of reward for choosing a narrow rather than a wide territorial sea. I do wonder whether perhaps the Mexican proposal is not to be interpreted as being really in favour of the narrow territorial sea since it offers rewards for such a choice - and in this difficult world rewards are seldom given except to encourage good actions.

There remains the United States proposal. 22/ Its basic virtue, as against the Canadian formula, is that it aims to resolve in a fair way the interests of the coastal and the fishery States where those interests conflict, and to provide the means by which just and reasonable agreements can be made to apply the principles in article 3 of the proposal. That is why the United Kingdom delegation will support the United States proposal.

Let no one think that this does not involve a heavy sacrifice by my country. It means abandoning the three-mile territorial sea. It means accepting not only the exclusive right of coastal States to fish up to six miles, but also giving them a further six miles of exclusive fishing, subject only to the requirement that this contiguous zone should be shared to a limited extent - and I repeat: to a limited extent - by other nations who have had full legal right to fish in those waters, many of them from time immemorial. In supporting the United States proposal, my country and its fishing industry will be accepting what I can only describe as a heavy blow.

This Conference has been convened by the United Nations, which was founded "to promote social progress and better standards of life in larger freedom"; "to practise tolerance"; and to "achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character". Certainly we have before us today a problem - an "economic, social and humanitarian problem" to deal with at our Conference. Let us deal with it in the spirit of the Charter.

In the United Kingdom we look to the future. Our past may be ancient, but we welcome the new world of today. We have ourselves played a part in assisting the creation of new, independent nations. Many of them are members of our Commonwealth family of free and equal partners. The United Kingdom is at one with other nations here in wanting to find a solution. That is why we are prepared to make the sacrifices which the United States proposal entails.

This Conference can succeed, but only if all of us are prepared to accept less than we would like and make concessions for the benefit of all.

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

U MYA SEIN (Burma): Before taking part in the discussion covering the work of this Committee, my delegation would like to take this opportunity to convey to you, Mr. Chairman, and the other officers of the Committee, our sincere congratulations on your unanimous election to the respective offices of the Committee. We are confident that your integrity, knowledge and skill will make a major contribution to the success of this Conference as a whole. At the same time we would like to extend our warm friendly greetings to all the delegations, the Secretariat of the Conference and the various Observers.

Under resolution 1307 (XIII) adopted by the United Nations General Assembly on 10 December 1958, we are gathered here today for the Second Conference on the Law of the Sea for the purpose of completing the unfinished work of the First Conference held here in 1958. Accordingly, our terms of reference are to consider the questions of the breadth of the territorial sea and fishing limits, and also the adoption of conventions or other instruments regarding the matters considered, including the Final Act of the Conference.

The tasks before us are clearly less numerous, although more difficult in nature, than the tasks of the First Conference in 1958. Nevertheless, my delegation notes with satisfaction that the climate of this Conference has, in a sense, improved since 1958, in correspondence with the wider international situation. This of course augurs well for a stronger spirit of co-operation and understanding among States. We are therefore optimistic that the desired agreement can be reached, provided this Conference rises to the required heights of statesmanship.

For our own guidance let us recall briefly the significance of lessons of past conferences on the subject. In the opinion of my delegation, the failure of the Hague Conference of 1930 taught us that extreme unilateral attitudes on problems of a multilateral nature usually prove fatal, because the spirit of give and take is the very breath of negotiation.

Then came the First United Nations Conference on the Law of the Sea in Geneva in 1958. This First Conference achieved some success relating to subsidiary questions, but could not settle the most important question of the breadth of the territorial sea. Nevertheless, the unmistakable trend of this First Conference was that the breadth of the territorial sea must be more than three miles.

Now, in 1960, we are in Geneva for the Second United Nations Law of the Sea Conference on the unsettled questions. For all my delegation knows, it may be that this Second Conference will establish the principle that the breadth of the territorial sea cannot be more than twelve miles. It is our fervent hope that in the course of our deliberations the area of agreement will increase to the extent of putting the mark of history on the successful codification of the law of the sea for all time.

That is why my delegation has listened with keen attention to the views and comments of the previous speakers. In so far as my delegation is concerned, we

believe that the great question before us is in reality the problem of adjusting the freedom of the high seas with the freedom of the territorial seas in a manner that is at once objective, realistic, equitable and lasting. In another sense it is also the problem of finding a proper balance of past standards and present standards for the purpose of elimination, or at least a reduction, of possible international disputes and conflicts in the future.

In this connexion my delegation would sound a note of caution and this is derived from the experience of 1958. Ordinarily past tradition and law may be well and good in their day, but an over-emphasis on past tradition and law is likely to do this Conference more harm than good. After all, what are tradition and law if they are not based on facts, reason, equity and consent? It is clear that past tradition and law must from time to time give way to new facts and circumstances, to form, in turn, new traditions and laws. This is simply to restate that tradition and law are alive and progressive, not dead and still. Thus the task of codifying the Law of the Sea is simultaneously the task of making progressive law. My delegation firmly believes that while this Conference will not look back in anger, it certainly desires to look ahead with calm and confidence.

To revert to the question of the breadth of the territorial sea, my delegation is convinced that in the consideration of the questions before us three factors must never be forgotten or ignored, namely, that the physical or geographical nature of the coasts are not the same; secondly, that the political, economic, technical, biological and legal aspects of the question vary with locality and that these dissimilarities must be taken into account; and thirdly, the incontrovertible observations of the International Law Commission Report to the effect that international practice is not uniform as regards the delimitation of the territorial sea, and also that international law does not permit an extension of the territorial sea beyond twelve miles.

In view of the above considerations, my delegation, in conclusion, would submit two points:

With regard to the substance of the question we consider that if this Conference, in its wisdom, desires to adopt twelve miles as the maximum breadth of the territorial sea, my delegation would be gratified to support it in the interests of universal agreement and peace.

With regard to the procedure of the question, we are convinced that to ensure the success of the Conference, it would be preferable to consider the question of fishing limits before we consider the question of the breadth of the territorial sea.

Now one last word. Today world history is in a hurry and it cannot wait. The peoples of the world have a right to expect enlightened decisions from this Conference. Let us therefore dedicate ourselves anew to make this Conference the crowning Conference of the Law of the Sea Conferences.

Mr. W. RIPHAGEN (Netherlands): Since this is the first time that I have the floor in this gathering, may I take this opportunity to congratulate you, Mr. Chairman, and the Vice-President and Rapporteur, upon your appointment, which no doubt will help us to bring our proceedings to a satisfactory result.

Our Conference is confronted with the task of bringing an end to the chaotic situation prevailing since some time, in which several coastal States have thought fit to extend the frontiers of their territorial sea beyond the traditional belt of three nautical miles, reckoned from the low-water mark, and have even claimed beyond their territorial sea exclusive or preferential rights with regard to the exploitation of the living resources of the sea. In its endeavour to lay down rules for the maximum breadth of the territorial sea and for the rights of States with regard to fisheries, our Conference cannot, to my mind, simply try to find an arbitrary number of miles, which might at one time receive the affirmative vote of a two-thirds majority of the participating representatives; it has to deal with the interests both of the international community of States as such and of the individual States, and it must examine and decide upon the legal title on which sovereign rights of States of sea areas can be based.

In determining the breadth of the territorial sea and the extent of fishery rights of the coastal State, the choice is between the rules governing the principles of territorial sovereignty, and those embodying the freedom of the seas. It is obvious that such breadth and extent cannot be fixed unilaterally by a State according to its wishes, even if the interests of specific other States would not thereby be directly and immediately affected, since any national proclamation of sovereign rights beyond the traditional limits constitutes an encroachment on the freedom of the seas. The International Court of Justice has clearly stated this in its judgement in the Anglo-Norwegian Fisheries Case. 23/

The freedom of the seas being undisputedly a paramount interest of all States, a transfer of sea areas from the regime of the high seas to that of national sovereignty could surely only be justified if there were very compelling reasons to do so.

What then are the reasons adduced for modifying the frontier between the international regime of freedom of the seas and the national regime of exclusive rights? General arguments, valid for all coastal States, whatever their size, their needs and their means, and special reasons, depending on the particular needs and means of specific coastal States, have been brought forward. Both will have to be weighed against the interests of the international community as a whole and against the interests of other States.

With respect to the breadth of the territorial sea, it has been advanced that extension beyond the traditional limits is required for the protection of the

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23/ I.C.J. Reports 1951, p. 113, 116.

coastal States' security. This would seem a rather queer argument in modern times, where mere distance has completely lost its protective value. But even apart from that, the argument could not weigh heavily against the primary importance of the greatest possible freedom of navigation on the seas. The impact of an extension of the territorial sea on international navigation has already been fully described by several other speakers. I think there is no need for me to repeat the undisputed facts here.

May I, however, once more stress the point that freedom of navigation on the seas is not only an interest of the States whose vessels sail the seas, but also of all States - even of landlocked countries - whose economic life is dependent on sea-borne trade. In this connexion it may be recalled that any justifiable need of the coastal State to exercise limited jurisdiction beyond its territorial sea has been fully covered by the rights of control in a contiguous zone, recognized in the first convention adopted at our previous Conference.

More complicated is the issue with regard to the exploitation of the living resources of the sea beyond the traditional limits of the territorial sea. The contrast is here one between the unlimited freedom of every State to fish on the high seas and the exclusive rights of the coastal State to fish within its territorial waters. Once more it is obvious that the interests of the community of States as a whole require the largest possible area of waters, in which every State is free to catch the fish it needs. Indeed, there is no problem at all, no conflict of interests, if and where the amount of fish is sufficient to permit every fisherman to take part in the exploitation of fishing grounds. If in certain areas it becomes necessary to restrict fishing in order to secure the optimum sustainable yield, the Convention on Conservation, adopted in 1958, 24/ fully provides for the appropriate measures.

Difficulties may arise only in those areas where there is not enough fish to permit free and competitive exploitation by everybody; we are then faced with claims for preferential or even exclusive rights of particular States.

Obviously there is no general basis, irrespective of the needs and means of the States concerned, to give preference to one State or to the other. The fact that the fishing grounds are geographically nearer to the territory of one State than to that of another, cannot in itself justify any preference for the first mentioned State. We will have to look for other factors in order to arbitrate between the interests involved; the particular features of the specific situation have to be taken into account.

Surely there exist countries and regions, the population of which is, on the one hand, dependent on fisheries and, on the other hand, does not dispose of the

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24/ Official records of the United Nations Conference on the Law of the Sea, Vol. II, annexes, document A/CONF.13/L.54.

means to fish otherwise than near their own coasts. Situations such as these are envisaged by the resolution adopted by our previous Conference. 25/ It would, however, be a fallacy to think that such a situation is a normal one. Actually there are many other States and regions the population of which is largely dependent on fisheries for their livelihood or economic development, and whose resources and fishing methods do not allow them to meet their needs otherwise than by fishing on the high seas near the coasts of other States. In the Netherlands, for example, many thousands of fishermen for generations made their living in the herring fishery near the English coast. They and their families entirely depend on this fishery to the same extent as fishermen of other States depend on coastal fisheries. I might cite other cases where fishermen depend on fisheries near the coasts of other States. This is the result of the simple fact that no fish can be found near their own coasts. It seems to me that considerations of justice require that the interests of such States and regions are taken into account on the same footing as those of States whose fishing is conducted mainly on a local scale.

To sum up, there are States who have no actual need for all the living resources of the high seas near their own coasts. On the other hand, there are States who actually are dependent on the fishery on the high seas near other States' coasts. Finally, there are many situations in which there exists no conflict between the fulfilment of the needs of the one and the other State, as the existing resources are sufficient for both of them.

Under these circumstances exclusive rights of a coastal State on the living resources of the waters adjacent to the territorial sea cannot possibly be justified as a general rule without reference to the actual needs and means of a specific coastal State, and without exceptions in view of the traditional fishing of other States.

A general establishment of fishery zones would in many cases result in insufficient exploitation to the detriment of the international community as a whole, insufficient exploitation both in respect of the needs of the world for a greater food supply and in respect of the necessity of securing the optimum sustainable yield. Even if the appropriate exploitation would be effected by the coastal State, the general establishment of fishery zones would still mean in many cases a completely arbitrary prevalence of the needs of the coastal State over those, equally pressing, of other States.

Let us not forget that the conventions adopted during the First Conference in 1958 do already reflect a dominant position of the coastal State in respect of areas of the sea which are adjacent to its coasts. Thus, for instance, the recognition of the base line system permits a large extension of coastal sovereignty which is of particular importance in regard to fisheries. With respect to natural resources in general, the Convention on the Continental

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25/ Ibid., document A/CONF.13/L.56, resolution VI.

Shelf 26/ gives extensive exclusive rights to the coastal State. It may be remarked that at least some fisheries - those relating to "living organisms belonging to the sedentary species" 27/ - are thereby reserved for the coastal State. As to fisheries conducted by means of equipment embedded in the floor of the sea, an exclusive right of the coastal State has been recognized in the Convention on Conservation. 28/ The same Convention gives the coastal State a privileged position with regard to the establishment of limitations of fishing in order to prevent over-exploitation.

On the other hand, the interest of the States who traditionally and without excluding in any way the fishing activities of other States, fish beyond the waters around their own coasts, do not under the existing conventions receive any special protection, though the needs of the countries which conduct such fishery are generally of the same character and urgency as those of the coastal States.

Notwithstanding all this, we are faced with a demand of some States to extend still further the rights of the coastal State as such to the detriment of the common interests of all States and of the special interests of States with traditional distant fisheries. The proposal tabled by the USSR delegation, 29/ as well as those put forward by the Mexican delegation 30/ and the Canadian delegation, 31/ all provide for exclusive fishery zones of the coastal State. None of these proposals even tries to strike a balance between the interests involved; indeed, they do not even refer to any particular need of the coastal State, nor to the traditional fisheries of other States. In this respect they all suffer from the defects we have outlined before. By their apparent simplicity they fail to do justice to the circumstances of any particular situation.

The USSR and Mexican proposals have the added disadvantage of permitting an extension of the territorial sea up to twelve miles. There is no need to repeat the grave objections to this part of the proposals from the point of view of international navigation. With regard to the Mexican proposal in particular, however, it may be remarked in passing that under that proposal the extension of the territorial sea is clearly not inspired by motives relating to the security of the coastal State; indeed one could hardly imagine a State trading in its security interests for a larger fishing zone!

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

27/ Ibid., document A/CONF.13/L.55, Article 2.4.

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

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

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

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

Coming now to the United States proposal, 32/ my delegation feels that it has at least the merit of recognizing in principle the equal value of the interest of the State which has traditionally conducted fisheries in a certain area, and the interest of a State which is geographically nearer to that area. By providing for the obligation to negotiate and for arbitration in case of failure of such negotiations, it permits an equitable solution for every particular situation in the light of the respective needs and means of the States concerned.

My delegation is still of the opinion that the traditional limits of the territorial sea should stand and that those who favour an extension of the rights of the coastal State as such have failed to adduce sufficient reasons for this encroachment on the great principle of the freedom of the seas.

We are, however, aware of the paramount importance of agreeing in this Conference on a solution which puts an end to the present chaos in the field of national claims and counter-claims with respect to maritime frontiers. In view of our aim, my delegation will do its utmost to contribute to a solution which is acceptable to a two-thirds majority of the States here assembled, provided, however, that such solution does not depart considerably from what is just and reasonable in the various circumstances. Among the proposals now before our Committee, only the United States proposal seems to meet these requirements.

Accordingly, and in spite of the disadvantages which would ensue from its adoption for our national fishery and other interests, my delegation will give its vote to the United States proposal.

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

Sr. EMILIANI (Colombia): Ante todo, séame permitido, en nombre de mi delegación y de mi Gobierno, felicitar al señor Presidente por la merecida elección de que ha sido objeto y que constituye para mi patria timbre de orgullo, dadas las entrañables vinculaciones que unen a nuestros dos países. Séame permitido también hacer extensiva esta sincera felicitación a los distinguidos colaboradores de la mesa directiva.

Cuando nos enfrentamos a las dificultades naturales de esta Conferencia, en que hay principios jurídicos que se interceptan e intereses que se contraponen, no está demás encarecer, ante todo, su trascendencia, a fin de que la conciencia de tal importancia predisponga favorablemente los espíritus a flexibilizar las antinomias en juego hasta lograr su adecuada concordancia. Debemos, pues, tener presente que la amplia materia del derecho marítimo internacional, del cual en buena parte se desprende la coexistencia jurídica y armoniosa de los Estados, depende del acuerdo a que lleguemos sobre los puntos en controversia. Fuera de que no sería ciertamente buen augurio para el futuro de la paz que los diversos Estados que integran la comunidad universal no diesen muestras de suficiente madurez jurídica llegando a acuerdos que constituyan una prevención general de que los medios civilizados del derecho, y no los irracionales de la fuerza bruta, son los adecuados para resolver todos los conflictos internacionales.

Cuando se trata de contribuir al ordenamiento jurídico del mundo, especialmente tratándose de temas que, como el que nos ocupa, origina continuos conflictos y perturba el entendimiento universal, los principios deben respetarse en su orden jerárquico, los intereses particulares ceder al general de la normación jurídica y los espíritus liberarse de prejuicios que les impidan adherir a las fórmulas más conciliadoras. Colombia, por razones ampliamente expuestas en oportunidades anteriores, ha sostenido la tesis de las doce millas de mar territorial, que incluso ha tenido consagración legislativa en nuestro país. No queremos, sin embargo, tener el estéril orgullo de posturas irreductibles que impidan un acuerdo general. Por tal motivo y teniendo en cuenta los criterios arriba enumerados, consideramos, ante las diversas fórmulas que a esta Conferencia se han presentado, que la propuesta por el Canadá 33/ de las seis millas de mar territorial y hasta otras tantas de zona contigua de pesca, siendo la más propicia a una conciliación entre los extremos, podría resultar un epicentro de concordancias. Como fórmula de transacción, ciertamente, ella reúne condiciones jurídicas y prácticas que pueden conjugar los diversos puntos de vista.

Comprendemos que toda medida matemática tiene algo de arbitrario, pero no puede olvidarse que ese es uno de los precios que tiene que pagar la norma jurídica a la técnica de su precisión, claridad y generalidad para poder ofrecer a todos los asociados la seguridad y garantía que ellos le demandan. Por eso, al hacer cualquier justipreciación no podemos regirnos por la ambición imposible de satisfacer los intereses contrapropuestos, sino por la modestia justiciera de perjudicarlos lo menos posible, así como la bondad de las leyes, conforme a un famoso filósofo inglés, no debe medirse por la cantidad de bienes que acarrean,

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33/ Documentos oficiales de la Segunda Conferencia de las Naciones Unidas sobre el Derecho del Mar, anexos, documento A/CONF.19/C.1/L.4.

sino por la cantidad de males que evitan. Ahora bien, la fórmula canadiense tal vez es la que menos afecta los principios de la soberanía, de la libertad de navegación y de la pesca.

En efecto, parece que ya no es materia de controversia que la soberanía y defensa de los Estados exige una ampliación del mar territorial más allá de las tradicionales tres millas. Pero es claro que esta ampliación no debe dilatarse hasta el extremo de interferir el importantísimo principio de la libertad de navegación, sin la cual el comercio mundial se vería seriamente entorpecido con grave perjuicio de todos los Estados sin excepción. Colombia, sacrificando sus intereses, encuentra que una zona de mar territorial de seis millas podría considerarse que imbrica armoniosamente los dos principios, pues satisfaciendo en buena parte la soberanía y defensa estatales, evita que se perturbe la libre navegación y el surco marítimo en zonas estrechas. Tendría también la ventaja de que una zona más amplia exigiría gravosos gastos de patrullaje y administración, que en tiempos de conflicto, dada la responsabilidad que se asume pues no hay derecho sin deber, alcanzarían proporciones realmente ruinosas. Especialmente los países de economía en desarrollo no deben pasar inadvertida esta consideración, en momentos en que sus recursos deben encauzarse hacia una mayor productividad que eleve el nivel de vida de sus habitantes.

Lo anterior no obsta, sin embargo, a que, en defensa de la economía de los Estados ribereños, en particular de aquellos que derivan de la pesca apreciables proventos, se acuerde, contigua a la zona de seis millas de mar territorial, otra hasta de seis millas más de zona de pesca. Colombia encuentra que esa es también una delimitación propicia a conciliar los intereses contrapuestos, porque una menor no garantizaría justamente lo que se quiere garantizar, y una mayor, además de poner trabas a la navegación y de parecer acaso excesiva, podría afectar seriamente la industria pesquera de los demás Estados no ribereños.

Y si los Estados ribereños mediante esta fórmula limitan sus intereses, no sería procedente para los no ribereños alegar derechos históricos que, además de forzar el espíritu de conciliación más allá de las equitativas compensaciones indicadas, carecen de fundamento jurídico, porque es principio tradicional que no existe prescripción alguna por el uso de los bienes de uso público, si se considera a alta mar como tal clase de bien. Y si no se le considerase como tal, sino como una especie de <u>res nullius</u> resultante de la delimitación del mar territorial de cada país, tales pretendidos derechos no sólo carecerían de fundamento jurídico, sino que serían contradictorios con cualquier supuesto de esta índole, pues ejercitándose como consecuencia de una delimitación del mar territorial, mal pueden arrogarse personería para impedir cualquier variación de sus líneas. En términos más sencillos, la reserva de todos no puede transformarse en el privilegio de algunos.

Colombia, pues, estaría dispuesta a apoyar la fórmula canadiense, en el entendimiento de que ella es la más viable para obtener la mayoría reglamentaria. En el caso de no lograrla, Colombia se reserva el derecho de insistir en sus primitivos puntos de vista y en la aplicación de las normas legales que la República tiene vigentes al respecto.

M. VLACHOS (Grèce) : Permettez-moi tout d'abord de vous adresser, ainsi qu'à l'ambassadeur Correa, les sincères félicitations de ma délégation pour votre élection, et d'ajouter que celle-ci, aux yeux de ma délégation, est un gage de plus du succès que tous dans cette salle nous souhaitons à cette Conférence. Je désire féliciter aussi le professeur Glaser pour son élection aux fonctions de Rapporteur.

Si ma délégation a tenu à intervenir dans cette phase de la discussion générale - qui d'ailleurs n'en est plus une, puisque nous avons devant nous déjà quatre propositions - elle l'a fait en fonction du devoir qu'elle a de contribuer à l'élaboration des lignes directrices qui devraient conduire nos débats à un heureux aboutissement.

La position de mon pays sur les questions qui nous occupent avait déjà été énoncée et expliquée au cours de la première Conférence du droit de la mer. Cette position n'a pas changé. Bien au contraire, à la lumière de l'expérience des dernières années et de l'évolution de la situation mondiale, ma délégation s'est raffermie dans la conviction qu'il ne serait pas à l'avantage de la communauté internationale d'opter pour une solution qui élargirait peut-être le domaine national de chaque Etat séparément, mais qui aurait des résultats dommageables certains sur le développement normal des relations internationales, créerait d'innombrables sources de friction, alourdirait les responsabilités des Etats riverains, serait une cause de contestations perpétuelles et provoquerait éventuellement un ralentissement de l'extension du commerce mondial, qui se développe à un rythme de plus en plus rapide.

La Grèce est un pays qui est encore loin d'avoir atteint le degré souhaitable de son développement. Trente pour cent environ de sa superficie est formé d'îles et elle possède des côtes d'une longueur astronomique par rapport à l'étendue de la terre ferme. Je ne le relate ici que comme une curiosité géographique : les côtes de la Grèce ont une longueur de 14 000 milles. Il serait dans ces conditions bien tentant pour ma délégation non seulement d'accepter mais de favoriser un élargissement de la mer territoriale jusqu'à douze milles, chose qui permettrait à mon pays d'unir, sans solution de continuité, par des bandes de mer territoriale, tout son patrimoine insulaire, et de s'assurer ainsi le contrôle exclusif et incontestable de toute la mer Egée. Ces avantages, considérés sous le prisme des intérêts les plus étroits et de la vanité nationale, auraient pu prévaloir. Ils auraient eu sans doute en contrepartie un accroissement de responsabilités.

Mais ce sont surtout des considérations d'ordre général qui nous ont amenés à rejeter la limite des douze milles, qui nous ont raffermis dans la conviction que la limite de six milles était la "règle d'or" qui, je le souhaite, pourra être adoptée, règle d'or qui nous semble applicable aussi bien pour l'étendue des eaux territoriales que pour les droits de pêche qui devraient, à notre avis, coïncider, puisque c'est là la règle de droit international qui est en vigueur.

Pourquoi ai-je qualifié cette limite de "règle d'or"? Je l'ai fait pour les raisons suivantes : en premier parce que, d'après le tableau récapitulatif du document de travail A/CONF.19/4 34/, sur 68 pays énumérés, il n'y en a que 18 qui

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34/ Documents officiels de la Deuxième Conférence des Nations Unies sur le droit de la mer, annexes, document A/CONF.19/4.

maintiennent une limite dépassant les six milles, et 21 qui maintiennent une limite de trois milles. Il est donc judicieux de dire que la règle d'or se trouve au milieu. En second parce que, de l'avis de ma délégation, cette limite correspond au mieux aux réalités géographiques de notre monde, réalités qui imposent des limitations - j'insiste sur le mot, je ne dis pas "limites" - de par la nature même des choses.

D'autre part, en étudiant les quatre propositions que nous avons déjà entre les mains, je me suis arrêté à l'une d'elles, la proposition présentée par la délégation du Mexique 35/, et en l'analysant je n'ai pu m'empêcher de faire une réflexion, et ici je rejoins mon collègue du Royaume-Uni qui a fait la même. Cette réflexion est la suivante : le rédacteur de cette proposition, quoique préconisant une largeur maximum de douze milles, admet lui aussi, dans le tréfonds de son coeur, que la règle d'or est la règle des six milles, puisqu'il est prêt à accorder une zone de pêche de dix-huit milles à l'enfant sage qui se contentera des six milles comme zone territoriale, tandis que l'enfant terrible qui optera pour les douze milles n'aura rien en extra pour récompense.

Il a été dit de cette tribune que nous sommes à la barre de l'histoire; mais l'histoire est faite d'actions et non pas d'une action. Depuis quelques années, nous assistons et nous participons tous à un effort mondial d'organisation et de régularisation sur le plan économique, sur le plan technique, sur le plan social et sur le plan juridique. Nous travaillons tous pour un monde moins désordonné - je ne puis que m'exprimer négativement - dans lequel les causes de friction et de mécontentement aillent diminuant, dans lequel le mouvement des personnes et des biens soit facilité de plus en plus, dans lequel les richesses de la terre soient plus équitablement réparties. De nombreux organes des Nations Unies, tels que l'ECOSOC, l'ECLA, l'ECAFE, la Commission économique pour l'Europe, se penchent sur des problèmes de tout ordre et préconisent, en y réussissant souvent, des moyens de faire disparaître ou d'aplanir les obstacles qui existent et qui entravent l'intensification des échanges. Pour ne prendre qu'un exemple, la Commission économique pour l'Europe a un Comité des transports qui développe une activité louable, a fait disparaître bien des obstacles qui diminuaient la vitesse et augmentaient le coût des transports. Grâce à l'activité de ce Comité des transports, maintes formalités ont disparu qui ralentissaient le rythme de la circulation dans le continent européen.

Au moment où un esprit que je qualifierai d'abolitionniste prévaut dans les grandes assises internationales - et nous, ici, sommes une grande assise internationale - au moment où sur la terre ferme les frictions s'atténuent et les barrières s'effritent, il serait à nos yeux violemment contradictoire d'adopter pour la mer des règles qui restreindraient la liberté de mouvement. Déjà en vertu des articles 4 et 7 de la première Convention adoptée en 1958 36/, par la méthode

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

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

des mensurations des straight base lines et de la largeur des baies, de larges étendues de mer libre deviennent mers territoriales. Allons-nous persister dans cette voie d'entêtement individuel sur le domaine commun?

Ma délégation est de l'avis qu'il ne serait dans l'intérêt de personne, ni des grands pays industrialisés exportateurs de produits manufacturés, ni des pays exportateurs de matières premières, d'établir un régime qui serait susceptible d'engendrer des restrictions de la liberté de la mer. L'extension de la mer territoriale jusqu'à douze milles me paraît minime à comparer avec l'immensité de la mer qui restera libre. Mais si l'on examine la chose par rapport aux voies maritimes les plus courtes, elle acquiert une importance énorme. Il y a sans doute le droit de passage inoffensif, droit anciennement établi et reconnu et universellement respecté. Mais les eaux territoriales ne sont pas la haute mer. Le très brillant orateur qui, de cette tribune, a ouvert les débats, a bien dit :

> "Without a fixed delimitation of the territorial sea, you will have no high sea and no freedom of navigation." 37/

Sur la question de la pêche, ma délégation est d'avis que l'Etat riverain devrait avoir un droit exclusif à proximité de ses côtes, cette proximité ne dépassant pas une limite qui coïnciderait avec les eaux territoriales. Toutefois, en considérant les grandes difficultés que nous envisageons, ma délégation, animée d'un esprit de collaboration internationale, considère que la proposition déposée par la délégation des Etats-Unis 38/ correspond au mieux aux intérêts de tous et concilie tous les intérêts des pays riverains aussi bien que ceux des pays maritimes. Je crois que cette proposition n'est nullement arbitraire. Elle se base sur deux considérations : la première est d'ordre général; si des droits préférentiels de pêche sont accordés aux pays riverains dans des eaux qui continueront à être la mer libre, il serait nécessaire de tenir compte de la pratique et des droits préexistants qui, ayant été exercés légalement et d'une façon continue, ne sauraient être méconnus. La seconde est d'ordre économique; si des droits de pêche étaient rigidement concédés aux seuls Etats riverains au-delà de leur zone territoriale, c'est-à-dire en mer libre, il s'ensuivrait une dislocation générale de tous les systèmes de pêche existants qui entraînerait de graves perturbations dans ce domaine et aurait des répercussions économiques très larges qui affecteraient de larges couches de populations besogneuses qui se nourrissent en grande partie de poisson à bon marché.

Il peut y avoir des cas où l'économie d'un pays dépend presque en entier de la pêche. Ma délégation serait prête à considérer avec sympathie toute suggestion qui tendrait à créer une exception, exception qui confirmerait la règle. Nous sommes appelés à légiférer, à créer une nouvelle règle de droit international. Nous devons le faire en nous inspirant des réalités et des tendances existantes, et de l'esprit de notre temps. Suivons les conseils de la mesure et ne nous laissons pas tenter par la démesure génératrice de bien des maux. Gardons pour César ce qui appartient à César, et laissons à Neptune ce qui lui appartient.

37/ Official records of the Second United Nations Conference on the Law of the sea, 1st meeting, para. 7.

38/ Documents officiels de la Deuxième Conférence des Nations Unies sur le droit de la mer, annexes, document A/CONF.19/C.1/L.3.