Second United Nations Conference on the Law of the Sea

Geneva, Switzerland
17 March – 26 April 1960

Document:-
A/CONF.19/C.1/SR.7

Seventh Meeting of the Committee of the Whole

Extract from the *Official Records of the Second United Nations Conference on the Law of the Sea (Summary Records of Plenary Meetings and of Meetings of the Committee of the Whole, Annexes and Final Act)*

SEVENTH MEETING

Tuesday, 29 March 1960, at 3 p.m.

Chairman: Mr. José A. CORREA (Ecuador)

In the absence of the Chairman, Mr. Sörensen (Denmark), Vice-Chairman, took the Chair.

Consideration of the questions of the breadth of the territorial sea and fishery limits in accordance with resolution 1307 (XIII) adopted by the General Assembly on 10 December 1958 *(continued)*

GENERAL DEBATE *(continued)*

Statements by Mr. Ulloa Sotomayor (Peru), Mr. Mameli (Italy) and Mr. Pěchota (Czechoslovakia)

1. Mr. ULLOA SOTOMAYOR (Peru) regretted that the present Conference had been convened without the necessary diplomatic and technical preparation. Any decisions it might reach would therefore lack the authority proper to generally accepted agreements. The influence of political groupings might eventually result in the formulation of texts, which would not, however, be binding on States that did not sign and ratify them.

2. Preparatory negotiations were particularly indicated in the present instance because the closely connected questions of the breadth of the territorial sea and of fishery limits raised problems that were bilateral rather than multilateral in character. They did not affect all countries; some States, for geographical, economic or other reasons, had no interest in them. The extent to which States engaged in fishing also varied widely. Few countries had large fishing fleets, whether offshore or distant-water. Lastly, very few countries had been obliged by economic and human factors to assert their special concern in the conservation and utilization of large marine resources in their adjacent seas in the face of the indiscriminate exploitation of that wealth for lucrative ends to the benefit of foreigners.

3. The problem facing the South-American States bordering on the Pacific Ocean was not a political, but an economic and social one, which had its legal aspects. For nearly fifteen years those countries had been waging a peaceful campaign to safeguard their natural resources. It had been claimed that the measures they had taken to protect that wealth from undue exploitation by powerful outside fishing interests were inconsistent with international law which, it was argued, prescribed very narrow limits for the territorial sea and conferred the broadest fishing rights on everyone on the high seas beyond. The fallacy of that argument had, however, been demonstrated by the now general rejection of the original three-mile rule. It had also been objected that Peru, Chile and Ecuador had acted unilaterally; but unilateral action by States could and did give rise to rules of international law, as witnessed the two Proclamations issued by President Truman on 28 September 1945 concerning the continental shelf and coastal fisheries. As to the delimitation of the territorial sea, that was, by its very nature, a matter of unilateral state action. For instance, in the Principles of Mexico on the Juridical Régime of the Sea, proclaimed in 1956 by the Inter-American Council of Jurists, the right of a costal State to fix the breadth of its territorial sea within reasonable limits has been recognized in the following terms:

> " Each State is competent to establish its territorial waters within reasonable limits, taking into account geographical, geological, and biological factors, as well as the economic needs of its population, and its security and defence." [1]

4. It has also been claimed that the indiscriminate freedom of international fishing was dictated by the interests of humanity. Peru and the other South-American Pacific States had pointed out in reply that the measures they had been obliged to introduce in no way discriminated against those foreign fishermen who were prepared to abide by the regulations laid down, and the control systems established, for fishing by nations. It had also been implied that the rules prescribed for the South Pacific might create dangerous situations if applied in other seas. He wished to emphasize in that regard that it had never been the intention of Peru or the other South-American States concerned to assert rules of a universal character. It was precisely because of the diversity of situations existing in different parts of the world that those States supported the principle that the determination of the breadth of the territorial sea was within the jurisdiction of the coastal State. Therefore, while claiming the right to assert a rule consistent with the needs of their populations, they had no objection to other States asserting different rules adapted to their local circumstances.

5. The proposals submitted by Canada (A/CONF. 19/C.1/L.4) and the United States of America (A/CONF. 19/C.1/L.3) were alike inadequate in at least two important respects. First, the extent of the fisheries zone which it was proposed to grant the coastal State was meagre in the extreme, since neither proposal went beyond twelve miles in that respect. Second, both proposals placed the emphasis on exclusive fishing rights, whereas the aims pursued by Peru and the other South-American Pacific States had as their objective the conservation of marine resources for the benefit, primarily, of the populations which largely depended upon them for their livelihood, not discrimination against foreign fishing interests. In addition, all the measures adopted by Peru and the other States concerned explicitly reaffirmed the freedom of navigation.

6. Turning to the question of historic rights, he recalled that at the first United Nations Conference on the Law of the Sea, the United States delegation had at first suggested that ten years' practice of fishing should be required to establish a " historic right ",[2] but had subsequently reduced that period to a mere five years,[3] a figure which reappeared in the United States proposal submitted to the present Conference. That change had

[1] See *Final Act of the Third Meeting of the Inter-American Council of Jurists, Mexico City, 17 January - 4 February 1956* (Washington, D.C., Pan-American Union, 1956), p. 36.

[2] *Official Records of the United Nations Conference on the Law of the Sea*, vol. III, annexes, document A/CONF.13/C.1/L.159.

[3] *Ibid.*, document A/CONF.13/C.1/L.159/Rev.1.

been prompted by a desire to assert the claim to fish off the Peruvian coasts by " tuna clippers ", flying the United States flag, which had, in certain cases, begun to operate only after 1950. It was unnecessary to point out that historic rights could not be established by a practice of a mere five or ten years' standing; only in the context of centuries could the term " historic rights " be meaningful.

7. In keeping with the Principles of Mexico, which recognized that each State was competent to fix its territorial sea within reasonable limits, and taking into account the various factors specified therein, Peru had in 1947 adopted measures governing the extent of its jurisdiction over sea areas. Peru could not consider amending that decree — a possibility provided for in the text — unless it was offered a formula that adequately met its requirements.

8. The special position of Peru in relation to its adjacent sea was determined by historical, geographical and political factors and by exceptional biological conditions. The historic roots of Peruvian interest in that sea could be traced to pre-Inca times. During the Spanish domination, England, which had asserted its power on the seas, had agreed by international treaties entered into with Spain to renounce all right to trade in the sea adjacent to the coasts of Peru.

9. Social and economic conditions, relating to the country's food supply, the coastal economy and the production of guano, also justified Peru's attitude to its adjacent sea. The relevance of those conditions, and the urgent need to study them, was demonstrated by the approval by the United Nations Special Fund of a request from Peru for assistance in setting up a national institute for the study of the country's marine resources.

10. The population of Peru was already under-nourished and its rate of increase was alarming; new sources of food must therefore be urgently sought. A large part of the population lived in the coastal area, which was mostly arid; it therefore had to supplement its meagre agricultural production with that of its coastal fisheries. A country faced with so urgent a need to protect its fast-growing population from the threat of starvation could not consent to the indiscriminate exploitation of its marine resources for the benefit of commercial interests from distant countries. The vital needs of the coastal population could never be sacrificed to the interests of those who were simply seeking to enrich themselves by providing additional foodstuffs for the inhabitants of regions where under-nourishment was unknown.

11. Moreover, Peru had to protect the interests of tens of thousands of its citizens engaged in industries based on fishing.

12. Lastly, there was the importance of guano — supplies of which depended on the conservation of marine life — for the country's agriculture, especially its two main crops: cotton and sugar-cane. Peru depended largely on its exports of agricultural products, 60 per cent of its people being engaged in farming or related activities.

13. In recent years, assistance to the under-developed countries had become the *leit-motiv* of international relations. The highly developed countries had recognized their duty to provide such assistance. It was paradoxical that the same large countries that had proclaimed their willingness to assist the under-developed countries should simultaneously seek to protect private interests exploiting the smaller countries, and thus help to perpetuate poverty and inequality. It would be possible to deal at length with that situation from the point of view of the equality of rights of States and the doctrine of the abuse of rights, but the problem was above all a human one, and international law, which had for long functioned exclusively as an interstate law, was becoming increasingly concerned with human beings.

14. Attempts had been made to minimize the economic and human interests of coastal populations by invoking the requirements of the conservation of the living resources of the sea. But surely the coastal State was the one best qualified to enact regulations, and to introduce control measures, for that purpose, in the light of the special needs of its own area.

15. Peru was in no way opposed to the formulation of rules susceptible of universal application by the international community. It could not, however, agree that the desire to formulate universal rules of international law should sanction condonation of injustice, disregard for moral principles or endorsement as an international practice of what was simply an abuse. It was unnecessary to apply blindly a rigid uniform rule at all times and *in all circumstances in order to arrive at universally* valid legal principles. The acceptance of uniform criteria that would make it possible to adapt flexible rules to varying situations was all that was required.

16. Unfortunately, the proceedings of the 1958 Conference offered little hope of an understanding attitude on the part of States which were defending the interests of those who exploited the living resources of Peru's adjacent sea; and the opening exchanges at the present Conference provided little hope of improvement in that respect. The Peruvian delegation was confident that the Latin-American countries would remain faithful to the ideals of justice, and also placed its trust in the new countries which had gained their independence during the last fifteen years. Those countries were faced with the problems bequeathed to them by colonial legislation in respect of the breadth of the territorial sea and fishery limits, and would naturally wish to examine their own needs carefully, in the light of their peculiar geographical, economic and social conditions, in order to adopt the solution best suited to their own needs. They were also faced by a multiplicity of other equally urgent and complex problems, and should therefore be allowed sufficient time to consider what their requirements were in the way of the territorial sea and fishery limits.

17. Any attempt to deny Peru its special position in relation to the resources of its adjacent sea would be a denial of the facts of nature. Those resources were nature's compensation for the aridity of Peru's land domain; and they should be used to wipe out malnutrition and poverty among the coastal inhabitants rather than to enrich foreign commercial undertakings engaged in the pursuit of private gain. When an objective technical study of Peru's marine resources had been completed with the co-operation of impartial international bodies, his country's exceptional position would

certainly be confirmed by the international community, and its right acknowledged to jurisdiction over a sea area greater than that which was being now advocated on grounds irrelevant to the case of Peru, and which could not be accepted without sacrificing the present and future interests of its inhabitants.

18. Mr. MAMELI (Italy) said that his country's attitude to the questions on the Conference's agenda had not changed since the first United Nations Conference on the Law of the Sea. That attitude rested on respect for existing principles of international law — a fact that he wished to reaffirm, for, although the Italian delegation was most anxious to see as wide an agreement as possible reached, it was obliged to remind the Conference that the questions under consideration were already governed by the general rules of the law of nations, the fruit of centuries of effort by the international community.

19. With regard to the territorial sea, the Convention on the Territorial Sea and the Contiguous Zone had recognized the rights of the coastal State, and those that it must grant other States, in its territorial sea. The only point at issue was that of the breadth of the territorial sea. Italy's position on the subject had always differed from that of the countries which had traditionally supported the three-mile rule. Italy had always followed the six-mile rule, and in agreements concluded with other Mediterranean countries had recognized the six-mile limit claimed by them for their territorial sea. But it must be emphasized that the Italian Government had never believed that international law on the matter resided exclusively in the principle that each State was free to determine the breadth of its territorial sea as it saw fit and to require other States to observe the limit thus fixed.

20. He referred to the works of Mr. Anzilotti, an eminent Italian international lawyer, whom the representative of Saudi Arabia had cited at the Committee's first meeting to support the argument that no general rule of international law had been developed to replace the obsolete rule based on the range of coastal artillery. In fact, Mr. Anzilotti's views did not support the conclusions which the Saudi-Arabian representative wished to draw. While recognizing that the three-mile rule was by far the most widely applied, Mr. Anzilotti had observed that it did not constitute a general rule recognized as binding by all States; but, pursuing that line, he had reached the final conclusion that the sole extant general rules on the subject were those laid down in the many bilateral agreements fixing the breadth of sea in which the parties were free to engage in certain activities or were obliged to abstain from certain other activities. He had concluded that where there was no true agreement, either explicit or tacit, there were no reciprocal obligations — a conclusion that applied with just as much force to the non-coastal States as to the coastal State. The latter would not have to observe the three-mile limit in determining the breadth of its territorial sea; conversely, the non-coastal States would be no more obliged to recognize as part of the coastal State's territorial sea any breadth the latter might claim beyond three miles, and accordingly would not have to abstain from engaging therein in the activities that all States were at liberty to exercise on the high seas.

21. Moreover, Mr. Anzilotti's conclusions were corroborated by those of the International Law Commission, which had recognized in article 3 of its draft rules on the law of the sea that international practice was not uniform with regard to the delimitation of the territorial sea, and which had further considered that to extend the territorial sea beyond the twelve-mile limit would be a breach of international law. In addition, the Commission had noted that many States had established a breadth in excess of three miles, and that many other States did not recognize that breadth when their own territorial sea was narrower. Furthermore, a State which extended its territorial sea to between three and twelve miles could enforce such extension only in the case of those States which did not oppose it; others would retain their right not to recognize the extension of the territorial sea beyond three miles. The view expressed by the International Law Commission on the existing situation in international law coincided exactly with that of Mr. Anzilotti.

22. The present situation was certainly to be regretted, because it might give rise to disputes. It was to forestall such developments that efforts were being made to reach a general agreement, which had so far proved impossible of achievement. It was plain that such general agreement could only be reached through mutual concessions. In that connexion the States which had traditionally adhered to the three-mile rule had already made a very generous concession by agreeing to a maximum limit of six miles. It now behoved those States which wanted higher limits to make sacrifices in their turn. He pointed out to the representatives of the Soviet Union and Mexico that, if common ground was to be found, it was not enough simply to explain that in the proposals submitted by the delegations of those two countries the twelve-mile limit represented a maximum which no State would be obliged to adhere to in determining the breadth of its territorial sea. What prevented certain States from agreeing to the principle of a maximum breadth of twelve miles was certainly not the fact that they would themselves have to assume the responsibilities pertaining to so broad a territorial sea, but rather their concern at the prospect of other States' closing such large tracts of the high seas to international use. The importance of the principle of the freedom of the seas for the life of the international community could not be too strongly emphasized. Partial abrogation of that principle for the sake of the advantages, in any case doubtful, of sovereignty over broader territorial seas would entail a serious risk. He urged the representatives of the many countries which were in favour of extending the territorial sea to give that consideration careful thought.

23. Turning to the question of fishing limits, he recalled that the sponsors of certain proposals had endeavoured to assimilate the contiguous zone to a zone in which fishing rights would be reserved to the coastal State. In its respect for international law, the Italian delegation would point out that existing law recognized neither a fishing zone nor exclusive fishing rights in the contiguous zone. Moreover, the very existence in international law of a contiguous zone had been widely contested. Although the partisans of the contiguous zone might regard it as a part of the high seas outside the territorial sea of a

State, in which the latter enjoyed customs, public health or immigration privileges, the contiguous zone had never been regarded in general international law as a zone exclusively reserved for fishing. In that respect the International Law Commission's opinion was quite definite; the Commission had not wished to grant the coastal State the exclusive right of fishing in the contiguous zone. That opinion had been fully endorsed by the first Conference. The principle by which, in general international law, a State might not invoke exclusive fishing rights in any zone outside the limits of its territorial sea had been clearly and categorically confirmed in article 24 of the Convention on the Territorial Sea and the Contiguous Zone.

24. The Italian Government, however, recognized the possibility of taking account in specific agreements of the special situation of certain countries and had given proof of that attitude by concluding with a neighbouring country a convention under which it recognized certain fishing rights within a contiguous zone of four miles outside the territorial sea. Its goodwill was therefore not in question. But his Government did not wish to see that exception converted into a general rule by the establishment of a series of zones of the high seas which would become so many reserved fishing zones for the benefit of a single country. At the first Conference, the Italian delegation had declared its readiness to make a sacrifice to facilitate the conclusion of a general agreement, and it was still prepared to subscribe to an agreement granting the coastal State preferential fishing rights in the contiguous zone, on condition that the fishing vessels of other countries which traditionally fished in those waters would be allowed to continue to do so without let or hindrance.

25. For that reason his delegation would support the United States proposal (A/CONF.19/C.1/L.3). But it could not go further by agreeing to solutions that it considered would inflict serious damage on the interests of the international community as a whole. It could not, therefore, support a formula that would amount to excluding from a part of the high seas transformed into a contiguous zone fishing vessels which, vis-à-vis the coastal State, were already at the disadvantage of having to steam a longer distance. He urged representatives to reflect on the consequences for the world economy of adopting such a formula. The main fishing grounds were situated precisely in that area of the high seas lying between six and twelve miles from the coast. To take only the case of Italy, to prohibit its craft from fishing in such areas in the Mediterranean Sea and in the Atlantic Ocean would entail laying up forty per cent of the Italian fishing fleet, thus depriving some 400,000 persons of their livelihood. Those figures gave some idea of the effects of such a decision on the economic and social situation of countries engaged in fishing, on the food supply of the whole world and on the general prosperity. It should not be forgotten that the fifteen or so countries which, according to the Canadian representative, alone had an interest in maintaining their fishing rights in the contiguous zone were precisely those countries whose workers to a very large extent ensured the supply of fishing products to the whole world. A United Nations conference could not possibly adopt solutions which would inevitably lead to disaster.

26. For those reasons, the Italian Government could not support either the Canadian proposal (A/CONF. 19/C.1/L.4) or the Mexican proposal (A/CONF.19/ C.1/L.2), both of which, although prompted by a spirit of conciliation, would amount in practice to granting the coastal State in the contiguous zone all the advantages it enjoyed in its territorial sea without any of the corresponding disadvantages. With regard to the Mexican proposal in particular, it was to be regretted that the notion of a territorial sea combined with an elastic contiguous zone should have found favour with the Latin-American countries, which were strongly attached to lucidity in the law. Moreover, the obligation to review the breadth of the contiguous zone every five years would not be compatible with the purpose of the Conference, which was to codify existing international law on the subject.

27. Should the compromise formula proposed by the United States delegation not be acceptable to the Conference, the Italian Government would be compelled to abandon its hope of a general agreement and to take its stand on the strict observance of the international law currently in force, which did not recognize contiguous fishing zones.

28. His delegation's sole aim was to protect the interests of the community. It was all too easily forgotten that although the high seas were open to all, fish stocks were not equally distributed therein. If the idea of an exclusive fishing zone reserved for the coastal State were accepted, the fishing vessels of certain countries would one day find themselves excluded from those regions where fish was plentiful. That was why the Italian Government defended the principle that the high seas and their resources were in the common ownership of all mankind.

29. Mr. PECHOTA (Czechoslovakia) said that, although his country was land-locked, it owned merchant ships which navigated in all the oceans of the world and called at many great ports. It had therefore a direct interest in the subjects under dicussion, and, as a firm believer in international co-operation on terms of equality, would do all in its power to promote the success of the Conference.

30. Although the first United Nations Conference on the Law of the Sea had been unable to settle the present issues for reasons that were known to all, it could be credited with a certain measure of positive achievement: in addition to adopting four valuable international conventions, it had disproved the existence of the so-called three-mile rule upheld by certain States, as of any rule establishing a uniform breadth of territorial sea for all States. It had brought out the close relationship between the breadth of the territorial sea and the safeguarding of the sovereign rights and interests of coastal States, which led to the logical conclusion that a State should be entitled to determine the breadth of its territorial sea for itself, with due regard for its own needs and interests and for those of international navigation. Lastly, the first Conference had indicated practical means of resolving the problem, concentrating its efforts on the elaboration of a formula whereby minimum and maximum breadths for the territorial sea would be laid down in accordance with international law. Moreover, the draft articles on the subject prepared by the International Law Commission embodied guiding principles

which should have led the first Conference to a solution. After a careful study of existing standards of international law and current international practice, the Commission had arrived at the indisputable conclusion that the establishment of a breadth of territorial sea of between three and twelve miles was not a breach of international law; in other words, it was recognized by international law.

31. Any fresh attempt to reach agreement on the breadth of the territorial sea and on the closely associated problem of fishing limits would have to be based on existing circumstances and on the recognition, in accordance with the Charter of the United Nations and other international instruments, of the right of all States to safeguard their legitimate interests. The present Conference should be guided by a desire to further the economic and political development of States and co-operation between them on terms of full and sovereign equality. All the members of the Conference were aware that it was neither possible nor necessary to fix a uniform breadth of territorial sea or zone of exclusive fishing rights for all States, and all the proposals so far submitted recognized the right of States to fix those breadths within certain limits, although they differed in the maximum breadth to be imposed. The breadth of the territorial sea was determined by historical circumstances and the needs of each individual State. It was based on such major considerations as security, territorial integrity and prudent exploitation of the resources of the sea in the vicinity of the coastal State. The latter was clearly the best judge of such matters, and other States should respect the measures it adopted to safeguard its legitimate interests. Accordingly, the correct approach to the present issue was one that would strike a balance between the two major principles of international law in the matter: that of the sovereignty of the coastal State; and that of the freedom of the high seas.

32. It had sometimes been argued, without foundation, that an extension of the territorial sea, even within the twelve-mile limit recognized by existing international law and current State practice, would restrict the freedom of navigation. Yet the first Conference had reaffirmed the principle of international law whereby the ships of all States enjoyed the right of innocent passage through territorial waters. Existing restrictions did not as a rule affect merchant shipping, but applied only to the passage of warships and fishing by foreign craft. And past events had shown that the presence of foreign warships in the coastal waters of a State, or unauthorized fishing in those waters by a foreign State, were far from conducive to friendly international relations.

33. The argument that land-locked States lacking a coastline of their own were bound to favour the narrowest possible territorial sea was quite unjustified. The primary concern of those States, which included his own, was that neighbouring coastal States, of whose territorial waters they made use, should be placed in a position to ensure their own territorial and economic integrity, thereby creating stable conditions for vessels exercising the right of innocent passage. Since that right was enjoyed by all States, the actual width of the territorial sea was not a decisive consideration for land-locked States seeking access to the sea.

34. If, as was essential, the legitimate defence and economic needs of Governments were to be recognized, the Conference would have to take into account all those genuine factors which at present determined the trend of international practice: State practice since the first Conference had convincingly demonstrated that more and more countries were coming to accept the rule that, within the framework of its sovereign rights, each State was free to determine the breadth of its territorial sea and fishing zone between three and twelve nautical miles. States from almost every quarter of the globe had promulgated such legislation during recent years. They included the Chinese People's Republic, Iraq, Iran, Panama and Saudi Arabia. And Iceland was one of the States which had recently enacted legislation providing for a zone of exclusive fishing rights.

35. In the light of that practice and in that of the principles of existing international law, the Czechoslovak delegation contended that the rule governing the breadth of the territorial sea must be based on principles that wholly reflected the present legal situation; that it must be non-discriminatory; and that it must be consistent with the modern trend of development of international law. Those desiderata were met by the Soviet Union proposal (A/CONF.19/C.1/.L.1), the effect of which would be to enable any State to fix the breadth of its territorial sea in accordance not only with its security and economic interests but also with the pertinent historic, geographical and other factors. Its application extended to any State, whatever the breadth of its territorial sea between the limits of three and twelve miles, and it did not preclude any State from freely choosing within those limits in the future.

36. Such proposals as those of Canada (A/CONF.19/C.1/L.4) and the United States of America (A/CONF.19/C.1/L.3), on the other hand, imposed a limit of six miles for the territorial sea and hence failed to meet the position of a considerable number of States — more than twenty — which in the conditions created by current international practice had already established their territorial sea within the limits of nine to twelve miles.

37. The foregoing clearly confirmed that the most equitable solution that would take account of the interests of all States was that providing for a maximum breadth of twelve miles as in the Soviet Union proposal and in article 1, paragraph 1 of the Mexican proposal (A/CONF.19/C.1/L.2).

38. His delegation considered that the principles underlying the Soviet Union proposal would also prove acceptable to land-locked States whose rights to freedom of access to the sea and of innocent passage through the territorial sea of coastal States was recognized by international law.

39. His delegation favoured the settlement of all international problems, including those before the Conference, through co-operation based on the sovereign equality of all States as enunciated in the Charter of the United Nations, and would on the present occasion support any proposals designed to reconcile diverging points of view. With mutual understanding and respect for the legitimate interests of all States, real progress would surely be made in resolving the important issues at stake.

The meeting rose at 4.55 p.m.