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THE LAW OF THE SEA:

SOME RECENT DEVELOPMENTS

(With Particular Reference to the United Nations

Conference of 1958)

Carl M. Franklin (Author)

The thoughts and opinions expressed are those of the authors and not necessarily of the U.S.

Government, the U.S. Department of the Navy or the Naval War College.

## APPENDIX N

### HOW WIDE THE TERRITORIAL SEA?\*

#### I. The Background and the Vote—1960 Conference

By

Captain ROBERT D. POWERS, JR., U.S. Navy

and

Captain LEONARD R. HARDY, U.S. Navy

At 10:30 on the morning of 26 April 1960, an atmosphere of the utmost tension prevailed in the Palais des Nations in Geneva. For the third time, representatives of the nations of the world were voting on proposals to fix the breadth of the territorial sea. As the voting ended, a hush fell over the Assembly Hall and then the President of the Conference announced the vote on the U.S.-Canadian proposal which had been adopted in Committee. The vote stood 54 for the proposal, 28 against, with five abstentions. For the third time since 1930 the representatives of the nations of the world were unable to reach agreement on the width of the marginal sea; this time by a margin of one vote.

During the 1958 Geneva Convention on the law of the sea it became apparent that the customary 3-mile limit for the width of the territorial sea was unacceptable to many nations of the world. At the end of the Conference it was evident that although the United States and other maritime nations maintained that three miles continued to be the limit in the absence of an international convention, the real contest at the 1960 Conference on the territorial sea and fisheries would be between proponents of a 6-mile limit and a 12-mile limit. At the 1958 convention, Dr. Bocobo, the Philippine delegate, wittily lamented the death of Mr. Three-Miles, who had served the international community so well and so long, and said that his heirs, Mr. Six-Miles and Mr. Twelve-Miles, were quarreling over his estate.

Unable to reach agreement on the breadth of the territorial sea and the limits of fisheries control, the 1958 Conference postponed the argument for a later conference, and proceeded to adopt conventions on the freedom of the High Seas, Fishing and Conservation matters, the

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Continental Shelf, and the Territorial Sea and Contiguous Zone (without fixing territorial sea or fishery limits). The conventions adopted were of great importance and constitute a signal advance in the codification of the international law of the sea.\*\*

The General Assembly of the United Nations, at its thirteenth session decided that a second international conference "should be called for the purpose of considering further the questions of the breadth of the territorial sea and fishery limits," and the Secretary General of the United Nations set 17 March 1960, as the date for the convening at Geneva of this second conference on the law of the sea.

The diversity of claims and the differences in ideology and economics had been shown by the positions taken at the 1958 conference. At the opening of that conference, 21 nations claimed a 3-mile marginal sea, 17 nations claimed four to six miles, 13 claimed seven to 12 miles, and nine nations claimed the sea above the continental shelf, some of these to a distance of 200 miles.

The 3-mile limit, as a rule of international law, was based upon the customs and practices of the more powerful maritime nations and was first proposed in 1703 by the legal writer, Bynkershoek. It asserted that the extent of a nation's dominion over the sea was measured by its ability to control from land, and that the test of this ability was the range of cannon which was then about three nautical miles. During the 18th and 19th centuries and the first quarter of the 20th century, the United States, Great Britain, Germany, Japan, and other naval powers accepted three miles as the limit of the territorial sea. Some nations claimed four or six miles and Russia claimed 12, yet in practice and in books on international law, three miles was the widest breadth that had general acceptance.

During the period of the development of the 3-mile limit, many of the now independent members of the United Nations were colonies or dependencies of the larger powers. Many others were undeveloped. These nations, proud of their sovereignty and jealous of anything that smacks of "colonialism," desire to extend the limits of their legal control as far as possible. Many of them have small navies and a little merchant marine and the freedom of the high seas is theoretical and of small practical value to them. On the other hand they want to prevent stronger nations from approaching their shores and catching the fish swimming in adjacent waters.

The first documentation of the diversity in claims to the territorial sea was made at the 1930 Hague Conference for the Codification of International Law. There three miles was acknowledged as a mini-

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\*\*See Professional Note, "The Geneva Conferences on the Law of the Sea," U.S. Naval Institute PROCEEDINGS, April 1960, page 133.



mum but there was no agreement as to the maximum. Seventeen nations claimed a 3-mile limit, 17 nations favored a four to 6-mile limit, and one nation favored a 12-mile limit, while the U.S.S.R. confined itself to this statement, "Use of international maritime waterways must under no conditions be interfered with."

### **ANGLO-AMERICAN COMPROMISE REJECTED**

At the 1958 conference, the United States and Great Britain, hoping to obtain agreement by compromise, offered a proposal for a 6-mile limit, with an additional 6-mile zone of fishing control, with preservation of historic rights for nations whose nationals had engaged in fishing within 12 miles of another nation for five years or more. This proposal was generally accepted as a sincere effort to secure agreement and stop the scramble of many nations to restrict the freedom of the high seas. It secured 45 votes for, to 33 against, but did not secure the two-thirds majority necessary for adoption. The Soviet proposal that each state could establish its own territorial sea within the limits, as a rule, of three to 12 miles was rejected by a vote of 21 for, to 47 against.

During the two years between conferences, preparations for the showdown at the 1960 conference were made by many nations. The United States, firmly convinced that six miles was the outer limit consistent with security and the limitations of neutrality patrol, and fortified by the support for its compromise proposal at the 1958 conference, had its representatives from the Navy and from the Department of State visit nations all over the world to secure support for the 6-mile limit with six more miles of fishing control.

While the United States preferred a retention of a 3-mile limit for the marginal sea, analysis of the voting at the 1958 convention revealed that such a limit had no reasonable chance of approval at an international convention. The Soviet Union and its satellites could not be expected to vote for any limit less than 12 miles. Their aim was to try to reduce the effectiveness of the sea power of the free world nations by an extension of sovereignty into the high seas, which in addition to removing a vast area from the free high seas would convert all important international straits into territorial waters. The mobility of free world navies and merchant ships is one of the greatest restraints to the announced campaign of the Soviets for world domination.

The Arab states, emotionally opposed to Israel and hoping to close the Gulf of Aqaba and prevent commerce from reaching the Israeli port of Elath by sea, also were expected to support a 12-mile limit.

Mexico, Ecuador, Peru, and Chile all indicated a tendency to support a minimum zone of 12 miles, primarily to protect fishing.

A total of 22 to 24 states of the United Nations were therefore expected to support a 12-mile limit, while slightly more than two-thirds of the states appeared from their voting record to be willing to accept six miles as the width of the marginal sea, but the problem of getting them to do so involved consideration of the limits of fisheries control. The last conference indicated that there was broad disagreement on this issue, but practically all of the states willing to accept a 6-mile limit had voted either for the U.S. or for the Canadian proposal. The single difference between these proposals was in the control of fisheries in the 6-mile fishing control zone adjoining the 6-mile territorial sea. The U. S. proposal would have preserved the historic rights of other nations to fish in the area of the second 6-mile marginal zone forever, and the Canadian proposal would have abolished such rights immediately.

Fishing rights were therefore an important item at the 1960 conference, for to many countries they are extensive and economically important. Nationals of some countries have fished to within three miles of the coasts of other countries for hundreds of years. Immediate loss of this right to fish would have resulted in severe economic dislocation and hardship to the nationals of many countries, among them the United States and several western European nations. Canada, Iceland, Denmark, Norway, and a few smaller states had extensive foreign fishing off their coasts and wanted it stopped, though Denmark and Norway wished to continue to fish off the coasts of other nations.

When the conference met, with 88 nations participating, 24 were aligned with the Soviet bloc favoring a 12-mile limit, about 20 nations wished control over a wide zone for fishing, and the remaining 44 nations were relatively unaffected by the fishing problem and inclined toward a narrow belt of territorial sea. It appeared that if the fishing problem could be solved, more than the two-thirds required majority would accept a narrow limit of territorial waters as essential to the security of the free nations of the world.

The United States accordingly sought a formula which would be a combination of the U.S. and Canadian proposals at the 1958 conference. While the United States still favored a belt of three miles, it was obviously impractical to start with such a proposal. The goal was to gain acceptance of a 6-mile limit, as it was the opinion of our military experts that the Soviet formula, permitting a zone of from 3- to 12-miles at the option of the littoral state would be just as damag-



ing in effect to the security of the Free World as an absolute 12-mile zone.

Pre-conference discussions with some 40 nations had shown that a marginal sea of six miles, plus six more miles of fishing control subject to historic rights, had poor prospects for acceptance for many reasons, among them that Canada and other countries affected by foreign fishing would not accept perpetual preservation of historic fishing rights, and some of the newer nations of the world regarded such preservation as a vestige of colonialism.

Discussion with the states engaged in foreign fishing indicated that they would not accept the 1958 Canadian proposal. The United States then discussed with Canada and the foreign fishing states a proposal which would include a 6-mile territorial sea and a 6-mile contiguous zone for fishing control in which foreign fishing would continue at the level of the 5-year base period for a term of years to be determined at the Conference and then be terminated. Though pre-conference probings indicated that fishing nations were opposed to this, it appeared to be a reasonable method of allowing a satisfactory period for amortization of funds invested in fishing vessels and equipment.

At the conference, the U.S.S.R. filed a proposal for a permissive 3- to 12-mile zone of territorial waters, with provision that any state announcing less than a 12-mile zone could add the remaining area up to 12 miles as a fishing control zone. Mexico filed a proposal for a 3- to 12-mile zone, but providing for a bonus if the territorial sea was kept narrow. A nation claiming up to six miles would have a total of 18 miles for fishing control, one claiming 6 to 9 miles would get six additional miles for fishing control, and nations claiming 12 miles would get no additional zone for fishing.

Canada submitted the same six plus six miles as at the 1958 conference and the United States proposed the six plus six miles with preservation of historic rights maintained at the same level of fishing as during the 5-year base period.

### **SOVIET BLOC CALLS 6-MILE LIMIT POLITICAL**

The supporters of the 12-mile proposals lined up solidly and it appeared that they might be able to get a majority vote in committee. To complicate matters, delegate Sen from India made an impassioned plea in an opening speech for adoption of a rule that would keep warships away from the coasts of small nations. The Soviet bloc of nations seized upon this and each strongly attacked the 6-mile limit on the basis that the large maritime powers wanted a narrow

belt of marginal sea in order to permit them to use their large navies to coerce small nations in political matters.

The United States and the nations supporting a 6-mile limit stressed the importance of a narrow territorial sea as a means of preventing impairment of freedom of navigation. The 12-milers countered that the right of innocent passage was an answer to this argument, but Norway's representative stated that his country, as a small nation with a large merchant marine, knew from experience that the right of innocent passage will not protect merchant ships from harassment and interference through regulations and special controls.

Representatives of the Soviet bloc repeatedly stated that any limit less than 12 miles was unrealistic and that the United States and other nations should "compromise" by accepting this limit. Delegate Drew of Canada in reply to this argument stated that while there was plenty of evidence of conciliation and compromise on the part of the 3- and 6-mile nations there has been no sign of any proclivity to compromise by those supporting a 12-mile limit.

On 8 April, Canada and the United States having merged their proposals, Mr. Dean of the United States and Mr. Drew of Canada jointly introduced for their countries a proposal for a 6-mile marginal sea plus six additional miles for fishery control, with "historic fishing" to continue for ten years from 31 October 1961. This joint proposal, with withdrawal of the previous Canadian and U.S. proposal, appeared to be well received by a large number of delegations.

### **MEXICO'S ROLE TO PREVENT AGREEMENT**

Nevertheless, the hard-core 12-milers, led by Garcia Robles of Mexico, were openly determined to prevent conference agreement on any compromise proposal whatever, and took advantage of every possible parliamentary maneuver to prevent the joint U.S.-Canadian proposal from securing the necessary two-thirds majority.

In Committee, 18 nations from Africa, Asia, and South America introduced a proposal substantially the same as the Soviet proposal, and the U.S.S.R. and Mexico then withdrew their proposal. Thus only two principal proposals, the optional 3- to 12-mile limit and the U.S.-Canadian proposal of six miles plus six more miles for fishing control were voted upon on 13 April 1960. The 18-power proposal was defeated 36 for, and 39 against, with 13 abstentions. The U.S.-Canadian proposal was adopted by the committee by a vote of 43 for, 33 against, and 12 abstentions.

The committee therefore recommended to the conference adoption of the U.S.-Canadian proposal with a minor amendment which was designed to recognize Iceland's special case, but this amendment was



rejected in the later voting. In the plenary session, Mexico introduced a proposal that the conference agree that it could not agree and refer the matter back to the General Assembly of the United Nations. This was defeated. Brazil, Cuba, and Uruguay proposed authorization of arbitration commissions to hear and determine the validity of claims of a coastal state to preferential rights outside the territorial sea and contiguous zone, which was adopted as an amendment to the U.S.-Canadian proposal.

Peru and Cuba proposed provisions for preferential treatment for a coastal state. Ghana offered a provision to require advance notification for the passage of warships through the territorial sea and the contiguous zone. These proposals were either withdrawn or rejected.

A proposal was offered by Ghana, Liberia, and Ethiopia, urging that the United Nations give technical aid on fishing to undeveloped nations proved to be non-controversial, and this was adopted by 68 votes for, none against and 20 abstentions.

The main debate therefore centered on the U.S.-Canadian proposal, but no matters of great interest were discussed, indicating that the nations were fairly well decided on how they would vote. The U.S.S.R. criticized the United States for trying to get votes for its proposal, and finally the Soviets and Saudi Arabia announced that even if there was agreement on a 6-plus-6-mile zone, they and some other nations would not accept such a zone.

Immediately after the proposal was defeated (because it had received 54 votes when 55 were needed for the two-thirds majority required for adoption) the United States moved for reconsideration, but this motion was defeated.

The voting tally on the U.S.-Canadian proposal was as follows:

FOR: 54	Dominican Rep.
Argentina	Ethiopia
Australia	Finland
Austria	France
Belgium	Germany
Bolivia	Ghana
Brazil	Greece
Cameroons	Guatemala
Canada	Haiti
Ceylon	Holy See
China	Honduras
Colombia	Ireland
Costa Rica	Israel
Cuba	Italy
Denmark	Jordan



Korea	Chile
Laos	Czechslovakia
Liberia	Ecuador
Luxembourg	Guinea
Malaya	Hungary
Monaco	Iceland
Netherlands	India
New Zealand	Indonesia
Nicaragua	Iraq
Norway	Libya
Pakistan	Mexico
Paraguay	Morocco
Portugal	Panama
San Marino	Peru
Spain	Poland
Sweden	Romania
Switzerland	Saudi Arabia
Thailand	Sudan
Tunisia	Ukrainian S.S.R.
Turkey	U.S.S.R.
Union of So. Africa	United Arab Republic
United Kingdom	Venezuela
United States	Yemen
Uruguay	Yugoslavia
Vietnam	ABSTAIN: 5
AGAINST: 28	Cambodia
Albania	El Salvador
Bulgaria	Iran
Burma	Japan
Byelorussia	Philippines

Thereupon Mr. Dean made a statement that the United States had again offered a compromise to fix the breadth of the territorial sea which had failed of adoption by one vote. Since this compromise had been rejected, he said that the United States adhered to its traditional position that the customary 3-mile limit is the only breadth of the marginal sea sanctioned by international law.

The conference adjourned without agreement on the width of the territorial sea, and varying claims as to its extent by different nations will continue. It does appear that the nations who seek a limit of 12 or more miles have lost strength while the proponents of not more than six miles have gained. The 12-milers weakened their position by announcing in advance that they would not accept a 6-mile limit were it adopted by two-thirds of the nations of the world. Agreement by the

representatives of 54 nations on a 6-mile zone plus six miles for fishing control will have a very significant effect on the future development of international law in this area, whether it be by court interpretation, custom, or a later treaty or action by the General Assembly of the United Nations.

Meanwhile the United States is free to acknowledge only the customary three miles as the limit of the territorial sea.