THE TERRITORIAL SEA

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THE TERRITORIAL SEA

A SECOND conference on the Law of the Sea, under United Nations auspices, will open in Geneva on 17th March, 1960. It is expected to last until 14th April, 1960. The conference, at diplomatic level, is being convened by the General Assembly of the United Nations in an attempt to reach agreement on the breadth of the territorial sea and on any fishery jurisdiction outside it. All member States of the United Nations and of the specialised agencies have been invited to participate in the conference, while the interested United Nations specialised agencies and other inter-governmental bodies have been invited to send observers.[1]

A second conference is being held because of the failure of the first conference under United Nations auspices, held at Geneva in 1958, to produce a solution of these main issues acceptable to two-thirds of the nations present and voting, i.e. the majority required by the rules of procedure for decisions on all matters of substance.

The 1958 conference had been convened on the recommendation of the International Law Commission (ILC) established by the United Nations General Assembly in 1947, whose reports and drafts articles on the law of the sea provided the basis for the conference's examination of the subject.

This reference paper summarises the juridical and historical background to the problems of the law of the sea. It also summarises briefly (pp. 17–19) the principal achievements of the 1958 conference.

DEVELOPMENT OF LAW AND PRACTICE

Up to the end of the sixteenth century, very wide claims to control of the seas were asserted. Venice and Genoa respectively claimed the Adriatic and Ligurian seas; Spain and Portugal divided between them the Atlantic, Indian and Pacific Oceans; Britain claimed the 'British Seas'; Sweden the Baltic, and the Kingdom of Denmark-Norway the Northern seas. These attempts to gain hegemony over the high seas were challenged during the seventeenth century, when trade rivalry grew, and by 1700 the principle of freedom of the seas predominated. It was still generally regarded as desirable that a strip of coastal waters should be under the control of the littoral State, and the subsequent history of the subject is concerned largely with the question of the breadth of the territorial sea.

The Origin of the Three-mile Limit

The traditional view of the origin of the three-mile limit is that the Dutch jurist Bynkershoek advanced in 1703 in his work *De dominio maris* the theory that 'the dominion of the land ends where the power of its arms ends'. In other words, the range of gun shot determined the breadth of the territorial sea. As the range of cannon in the mid-eighteenth century was thought to be about three miles, this was held to be the source of the rule. Recent researches

[1]Resolution adopted by the General Assembly. 'Convening of a second UN conference on the Law of the Sea.' A/RES/1307 (XIII), 10th December, 1958.

suggest, however, that this is both an over-simplification of the source of the doctrine and an exaggeration of the actual range of early eighteenth-century cannon.[1] A Mediterranean rule, pre-dating Bynkershoek, by which merchant ships in time of war were exempt from capture while within cannon range of fortified neutral places is seen as having been combined with a Scandinavian doctrine of a marginal belt of territorial waters. The latter was the result of the Danish-Norwegian kingdoms being forced, in the seventeenth and eighteenth centuries, to contract its previous wide claim; by mid-eighteenth century this claim was reduced to one Scandinavian league (four miles, while the three-mile league is used in most of Europe). Since 1765 Spain has generally asserted a claim to a breadth of six miles (three miles during World Wars I and II). Five years earlier, France offered to acquiesce in a neutrality belt of three miles on the basis that cannon range might possibly be said to extend to that distance. This belt was not accepted by other Powers. Nevertheless the cannon-shot criterion was used in 1782 by the Italian jurist, Galiani, who approximated it to three miles.

By 1793 a marginal belt of neutral waters was generally recognised for neutral States, although the breadth varied. In that year the United States agreed to define its neutral waters at three miles on the understanding that cannon range was 'usually stated at one sea league' and that it was the smallest distance claimed by any State. This limit was agreed to by Britain and France.

Progress of State Practice and Treaty Law

The nineteenth century saw a rapid extension of adoption of the three-mile rule, particularly in relation to fisheries. In 1818 it appeared in the Anglo-United States treaty defining Canadian coast fisheries; in 1839 it was adopted in the Anglo-French Fisheries Convention, and it appeared in the North Sea Fisheries Convention of 1882 and in a number of similar agreements. Norway and Sweden remained outside the 1882 convention, maintaining their four-mile rule. Again, in 1893, *The Behring Sea Arbitration* between Great Britain and the United States, concerning rights of seal fishing, reaffirmed the three-mile limit of a State's jurisdiction over foreign vessels.

In 1876 the Customs Consolidation Act incorporated the principle in British Statute Law. All previous claims to the right to enforce customs laws outside the three-mile limit, the so-called Hovering Acts, were repealed, and the Government of the day described this as 'the Act by which British municipal legislation was made to conform with international law'. Since that year the principle of the three-mile limit has been embodied in every relevant agreement or treaty signed by the United Kingdom. Although claims to wider belts were advanced, for example by Spain, Italy and Russia, the three-mile limit gained wide recognition and has been applied by the majority of the principal maritime Powers.

At the same time, the view was advanced that the three-mile limit might be said to be obsolete owing to the increased range of gunfire and speed of ships. In 1896 the Netherlands proposed that a conference be held to consider a general extension to six miles, but the British view was that such an extension was not desirable. In the opinion of some eminent writers[2] (cited by Professor Waldock), however, the three-mile limit has become independent of the doctrine of the range of gunshot. This view was held also in the case of *The Elida* before the German Imperial Supreme Prize Court in 1915, when it was maintained that the axiom *cessante ratione non cessat lex ipsa* applied in this connection.

[1] Waldock, International Relations, Vol. 1, No. 5, April 1956. *International Law and the New Maritime Claims.*

[2] Raestad, Gidel and Walker.

The Special Position of Bays and Internal Waters

Waters actually within State territory are termed 'internal waters' and come under the complete territorial sovereignty of the State. As this definition applies to any part of the sea within the baselines from which the territorial sea is measured, the extent of these waters may be of considerable international interest. In particular, this applies to bays.

It can be taken as a general principle that the baseline from which the territorial sea is commonly measured follows the sinuosities of the coast at low-water mark. In the case of bays the problem arises as to where the baseline is to be drawn, as much of the waters may be well within the territory of the coastal State although the mouth of the bay is wide.

A major case in this connection is *The North Atlantic Coast Fisheries Arbitration* of 1910. In giving an opinion on certain points at issue between the United States and Great Britain arising from the interpretation of the treaty of 1818 referred to earlier (p. 2), the Court of Arbitration held that the baseline should be drawn across the mouth of a bay at the point where it first narrowed to ten miles. This principle was applied also in several Anglo-French Conventions in the nineteenth century. It was, however, specifically rejected by the International Court of Justice in the *Anglo-Norwegian Fisheries Case.* A 15-mile closing line for bays was proposed by the International Law Commission in its Draft Articles on the Law of the Sea, but Article 7 of the Convention on the Territorial Sea and the Contiguous Zone, adopted at the 1958 Law of the Sea Conference (pp. 13 *et seq*), whilst recognising that a definite limit must be placed on the length of the closing line of bays, has extended that limit to 24 miles.

Historic Bays

There are, however, certain so-called historic bays which, although having very wide mouths, have a long-recognised status as internal waters. The term 'historic waters' was used by the International Court of Justice in the *Anglo-Norwegian Fisheries Case,*[1] and is recognised as describing areas of internal waters which would not have that status were it not for the existence of an historic title. The necessary proof is regarded as being contained in the exercise over a long period of the requisite jurisdiction by the coastal State without opposition from other States. The Hudson Bay is a case in point. The 1958 Law of the Sea Conference recognised the unsatisfactory state of law regarding the juridical régime of historic waters,[2] and requested that the United Nations should arrange for a study to be made of the subject. The General Assembly postponed consideration of the matter until its 14th Session (1959) when it was decided to request a study of the question by the International Law Commission.

Attempts at Codification

Codification of municipal law tends to be a difficult subject, and codification of international law presents an even more complex task.

The idea was first suggested by Bentham at the end of the eighteenth century, and the French Convention decided in 1792 to create a Declaration of the Rights of Nations as a pendant to the 1789 Declaration of the Rights of Man, though the proposal came to nothing. Various projects were mooted in the nineteenth century, dealing in general with the law of war. The first Hague Conference of 1899 adopted a number of conventions which, in effect, codified much of the customary law of war. Several of these conventions which were revised at the

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[1] See pp. 5–6.

[2] On 20th July, 1957, the Soviet Government enclosed Peter the Great Bay in the area of Vladivostok. The points employed in the delimitation were approximately 120 miles apart.

second Hague Conference of 1907 dealt with certain aspects of maritime war. There was, however, no attempt to codify the international law of the sea in time of peace until shortly before the Hague Codification Conference of 1930.

The Hague Conference of 1930

In 1924 the Council of the League of Nations appointed a committee of 16 jurists to report on the questions it considered ripe for codification, and how this could best be achieved. In 1927 the committee reported that there were in their opinion seven such topics; among them was the law of the territorial sea. This was one of the three items finally selected by the League to be treated by an international conference on the codification of international law, which met at The Hague in 1930.

While some agreement was reached by this conference on the legal status of the territorial sea, and on the baseline from which it was to be measured, it was unable to agree on the breadth of the zone. The replies of governments to a questionnaire on the topic showed that 20 countries, including the United Kingdom, the British Dominions, the United States, France, Germany, Japan, Belgium, the Netherlands, China and Poland, were in favour of the three-mile limit; 12 States claimed six miles, among them Brazil, Spain, Persia, Roumania, Turkey and Yugoslavia; Norway, Sweden, Finland and Iceland claimed four miles for themselves but did not propose it as a general rule. The USSR did not propose a limit.

Of the States favouring a three-mile limit a number were in favour, in conjunction with it, of a contiguous zone of up to 12 miles from the shore, over which the littoral State might exercise certain rights of jurisdiction over customs, sanitary matters, or interference with its security by foreign vessels. This had been proposed by the Preparatory Committee as part of a basis of discussion.

Other States, of which the United Kingdom was one, opposed this idea. The British delegate said: 'The British delegation firmly supports . . . a territorial belt of three miles without the exercise, as of right, of any powers by the coastal State in the contiguous zone. . . . First, because in their view the three-mile limit is a rule of international law already existing adopted by maritime nations which possess nearly 80 per cent of the effective tonnage of the world; secondly, because we have already, in this committee, adopted the principle of sovereignty over territorial waters; and thirdly, because the three-mile limit is the limit which is most in favour of freedom of navigation.'

Owing to the wide differences of opinion on the question, the Second Committee of the conference, which dealt with the territorial sea, was unable to reach an agreement. The idea of a contiguous zone, as the report of the committee (League of Nations document C.230. M.117. 1930 V.) says, 'proved ineffective as the basis for a compromise'.

RECENT CLAIMS AND CASES

Latin America

In recent years claims to exercise exclusive rights over areas of the high seas greatly in excess of three miles have been put forward by a number of Latin American countries. In a Presidential Declaration of 25th June, 1947, Chile proclaimed 'protection and control' over all the seas contained within the perimeter formed by the coast and the mathematical parallel projected into the sea at a distance of 200 nautical miles from the coasts of Chilean territory. Peru issued a Presidential Decree on 1st August, 1947, in almost identical terms, and Costa Rica in a Decree Law of 2nd November, 1949 (following an earlier one dated 27th July, 1948), has also made claims of the same nature. Article 7 of the Constitution of El Salvador (issued on 7th September, 1950) states that the territory of the Republic 'includes the adjacent seas to a distance

of 200 miles from low-water line'. Argentina, in a Decree of 11th October, 1946, declared that 'the Argentine epicontinental sea and continental shelf are subject to the sovereign power of the nation'. The preamble to the decree defines the epicontinental sea as 'the waters covering the submarine platform' known as the continental shelf.

In December 1958, the Panamanian Government announced an extension of its territorial seas from three to twelve miles. This claim would have the effect of sealing off both mouths of the Panama Canal, beyond the territorial sea of the Canal Zone, which, as it is United States territory, extends for only three miles. In making its declaration the Panamanian Government stated that the change would in no way prejudice international communications.

China, UAR, Iraq, Libya, Saudi Arabia and Iran

Failure to reach agreement on a uniform breadth of territorial sea at the 1958 Law of the Sea Conference was followed by a series of unilateral extensions. In September 1958 both China and the United Arab Republic announced an extension of their territorial sea to 12 miles. It has been pointed out that on this basis China could assert that United States vessels supplying the island of Quemoy were within the Chinese territorial sea, while the UAR might claim to be able to deny to Israel the right to use the Gulf of Aqaba. The latter claim would, however, be inconsistent with Article 16(4) of the 1958 Convention on the Territorial Sea and the Contiguous Zone. It is also generally held that international law depends upon the acceptance of international rights and obligations by all affected States and not upon unilateral challenges by a limited number to the practice of others. It was to prevent a breakdown arising from such challenges that eighty-six nations met at the conference in 1958, and will be meeting again in 1960.

Other claims to twelve miles since the 1958 conference were those of: Iraq and Saudi Arabia (November 1958), Libya (March 1959) and Iran (April 1959). Ethiopia has claimed a territorial sea of twelve miles since 1953.

Indonesia

In December 1957, two months before the convening of the 1958 conference, the Indonesian Government announced that in future all the waters of the Indonesian archipelago would be considered as internal waters and that around the internal waters would be drawn a twelve-mile belt of territorial sea. The statement issued by the Indonesian Government said, *inter alia*, that 'all waters around, between and connecting the islands or parts of islands belonging to the Indonesian archipelago, irrespective of their width or dimension, are natural appurtenances of its land territorial and therefore an integral part of the island or national waters subject to the national sovereignty of Indonesia'. The statement went on to say that peaceful passage of foreign vessels would be guaranteed as long as it was not 'contrary to the sovereignty of the Indonesian State or harmful to its security'. Although the actual breadth of the territorial sea claimed was twelve miles, the use of the 'Headland System' for drawing baselines from the outer points of the islands of the archipelago had a widely different effect from that envisaged in the decision in the *Anglo-Norwegian Fisheries Case*. The effect of regarding an archipelago as the same type of geographic entity as a sinuous coastline was to enclose half a million square miles of water astride one of the busiest shipping lanes of the world.

The United Kingdom, along with some fifteen other governments, has stated that it continues to regard the areas of sea in question as part of the high seas.

Anglo-Norwegian Fisheries Case, 1951

By a Royal Decree of 1935 Norway had delimited a zone of waters off her

northern coasts from which foreign fishing vessels were to be excluded. The method adopted was the drawing of straight baselines from point to point of the outer fringe of islands off the coasts, the territorial sea being measured outwards from them, instead of from the low-water mark of the mainland coast. The areas of the sea within the baselines became, in the Norwegian view, internal waters. Norway held that her action was in accordance with tradition and with international law.

The United Kingdom brought the matter before the International Court of Justice in 1951. The United Kingdom contended, *inter alia,* that the only baseline known to international law was the traditional one following the sinuosities of the coast at low-water mark, except in the case of bays wider than 10 miles, in the case of which the baseline was drawn across the bay at the point where it first narrowed to 10 miles. Norway's traditional four-mile limit for her territorial sea was not at issue; it was accepted by the United Kingdom, on historic grounds, in the course of the pleadings.

The Court found, by 10 votes to 2, that the method employed by Norway for the delimitation of a fisheries zone off its northern coasts was not contrary to international law, and by 8 votes to 4 that the straight baselines drawn were not contrary to international law. Norway had, the Court held, established by long usage its right to the seas in question, and the geographic realities of the situation made the straight baseline principle, as adopted in this instance, applicable. The ten-mile rule for bays had not, the Court maintained, acquired the authority of a general rule of international law.

In giving judgment, however, the Court asserted that the delimitation of sea areas has always an international aspect, and cannot be dependent merely on the will of the coastal State as expressed in its municipal law. The judgment continued, in elaboration of this important point: 'although it is true that the act of delimitation is a necessarily unilateral act, because only the coastal State is competent to undertake it, the validity of the delimitation with regard to other States depends upon international law'.

Anglo-Danish Agreement on the Faroese Fisheries

The Faroe Islands, a dependency of Denmark, were granted a wide measure of autonomy in 1948. Under the present constitution the regulation of fisheries is a matter for the Faroese, while the Danish Government is responsible for foreign affairs and fishery protection.

Under the Anglo-Danish Convention of 1901 fishery limits and territorial waters round the Faroe Islands, Iceland and Greenland extended to only three miles from low-water mark with a ten-mile closing line for bays. The Icelanders, who had obtained full independence from Denmark in 1944, gave notice of denunciation of the convention in October 1949, the denunciation becoming effective in 1951, just before the announcement of the decision of The Hague Court in the Anglo-Norwegian fisheries case. This was followed by the unilateral extension of Icelandic fishery limits to four miles in March 1952 (see below). These developments had repercussions in the Faroe Islands and the Faroese *Lagting* (Parliament) formally asked the Danish Government in July 1952 to negotiate an extension of limits on their behalf. Negotiations between the Governments of Denmark and the United Kingdom were accordingly set on foot and were concluded by an Exchange of Notes on 22nd April, 1955, which without prejudicing the question of the three-mile limit, re-defined in a sense favourable to the Danes and the Faroese the areas round the coasts of the Faroes from which British fishing vessels were excluded. The agreement suspended operation of the two-year denunciation period laid down in the 1901 agreement for ten years, thus making the new limits firm for a period of 12 years. The agreement should therefore have run until 1967, the earliest

date for denunciation being 1965. The Faroese, however, had made it clear in the course of the negotiations that they would expect to benefit by any concessions later offered to Iceland, and after the failure of the first Geneva Conference on the Law of the Sea in the spring of 1958 and the unilateral extension by Iceland of her fishery limits to 12 miles, they again pressed the Danish Government to seek for further extensions. Taking account of the 'special situation' of the Faroe Islands the Government of the United Kingdom agreed to enter into negotiations, despite the fact that the 1955 agreement had only run three years of its course, and talks began in London on 12th September, 1958. A provisional Anglo-Danish Agreement on Faroese fisheries was signed in Copenhagen on 27th April, 1959. Under this agreement British vessels were to cease to fish within a belt of water broadly six miles from the Faroese coast. In an outer belt extending between six and 12 miles from the coast traditional British fishing was to continue, but in three special areas in the outer belt fishing was to be reserved at certain specified seasons for line fishermen.

The new agreement is only to remain in force pending an international solution of the general problem of fishery limits. If the second Conference on the Law of the Sea to be held in March-April 1960 were to fail to reach an agreed solution, the agreement is to continue in force for three years from the date of signature with one year's notice on either side after that. The United Kingdom agreed to these new arrangements despite the material sacrifices they involve to the British fishing industry because of their recognition of the exceptional dependence of the economy of the Faroe Islands on fisheries for a livelihood. The Danes and the Faroese were also willing to recede from their extreme position of a straight extension to 12 miles in the interests of finding an agreed solution.

Anglo-Icelandic Fisheries Dispute

As stated above, Iceland, which obtained full independence from Denmark in 1944, denounced the Anglo-Danish Convention of 1901 with effect from 1951. Meanwhile, on 5th April, 1948, there was enacted a 'Law concerning the Scientific Conservation of the Continental Shelf Fisheries', under which the Icelandic Ministry of Fisheries was authorised to 'issue regulations establishing explicitly bounded conservation zones within the limits of the Continental Shelf of Iceland; wherein all fisheries shall be subject to Icelandic rule and control'. The Icelandic continental shelf extends in places to as much as 40 miles from the Icelandic coast. Regulations issued in 1952 did not, however, extend Iceland's actual fishery limits to more than four miles measured from straight baselines drawn on principles derived from the judgment in the Anglo-Norwegian Fisheries Case.

The United Kingdom Government was among the first to protest at this extension. As a result of action by the fishing industry of the United Kingdom, landings of Icelandic-caught fish in Britain were suspended for some years. In November 1956, through the good offices of a special *ad hoc* body established by the Organisation for European Economic Co-operation (OEEC), an agreement between the British and Icelandic fishing industries was reached. It provided both for the resumption of landings and no further extension of fishery limits pending discussion by the United Nations General Assembly of the Report of the International Law Commission (see pp. 10–14). At the time, the United Kingdom Government stated that the interim agreement should not be interpreted as a recognition of the legal validity of the methods employed by the Icelandic Government for determining fishery limits.

When no agreement was reached at the 1958 Conference on the Law of the Sea on either territorial seas or fishery limits, the Icelandic Government declared

itself to have complete freedom of action over both fishery limits and the re-defining of more favourable baselines.

On 2nd June, 1958, little more than a month after the end of the conference, the Government of Iceland announced that a decree would be issued on 30th June, 1958, extending to twelve miles of the limits within which Iceland claimed exclusive fishing rights. This decree, which was signed on the above-mentioned date, came into force on 1st September, 1958. In addition to the economic and social arguments used in justification the Icelandic Government maintained that the Draft Articles on the Law of the Sea produced by the International Law Commission (see pp. 10–11) had recognised the right of States to increase their territorial seas up to a maximum of twelve miles. In fact the International Law Commission's draft articles on the territorial sea stated that the Commission 'considers that International Law does not permit an extension of territorial seas beyond twelve miles'.[1] A further argument employed by the Icelandic Government was that the United Kingdom Government had accepted the Soviet twelve-mile limit, and if the Icelandic extension was opposed it would be contrary to the theoretical equality of sovereign States in international law. This argument also was factually misleading. The *Anglo-Soviet Fisheries Agreement* of 5th May, 1956, neither *de jure* nor *de facto* recognised the Soviet claim to twelve miles of territorial sea. The agreement permitted British vessels to fish up to three miles off the Soviet coast in specified areas, and both parties expressly reserved their position on the question of territorial limits.

The Icelandic case was mainly an economic one. Icelandic statements asserted that the country's extreme dependence upon the fisheries around its coast made extensive conservation and control measures essential if the main source of indigenous Icelandic income was not to be at the mercy of foreign, and increasingly more efficient, fishing fleets (see, however, economic aspects of the fisheries dispute, pp. 8–10). The background to the new policy was a highly inflationary situation with a rapidly deteriorating balance of payments. Together these threatened to undermine the very high standard of living which had been achieved since 1945, largely as a result of United States aid and the presence of a US base at Keflavik. It was contended that a way of reducing this dependence, and at the same time making the Icelandic economy more viable, was to ensure that a greater proportion of the fish caught off Icelandic coasts was reserved to Icelandic fishermen. Although the twelve-mile policy was supported by all parties in the *Althing* (Parliament), its character in the early months was influenced by the presence of a Communist Minister of Fisheries.

In the period between the announcement of intention (2nd June) and the coming into effect of the new regulations, informal talks took place under NATO auspices in Paris between the Icelandic delegation and affected countries. Compromise proposals put forward by the United Kingdom included a scheme in which a generous share of the total yield of the fisheries throughout the whole area surrounding the coasts of Iceland would have been guaranteed to the Icelanders, and important areas would have been reserved for Icelandic small boat fishing. There was also an alternative proposal under which a continuous belt outside the limit claimed by Iceland since 1952 would have been reserved for Icelandic fishermen. An arrangement of this kind would have lasted for three years or for a shorter time if, meanwhile, a second Conference on the Law of the Sea had reached agreement on territorial waters and fisheries limits. The talks broke down at the end of August. A communiqué issued from 10 Downing Street on 1st September, 1958,[2] explained that the talks had failed because in return for any interim arrangements the Icelandic delegation had

[1] Report of ILC, GAOR, 11th Session (A/3159). Territorial Seas, Pt. 1, Sec. II, Limits of the Territorial Seas, Art. 3, para. 2.

[2] *The Times*, 1st September, 1958. Details of negotiations and text of communiqué.

demanded prior acknowledgment of Icelandic 'rights' to extend their fisheries limits to twelve miles.

Despite incidents between Icelandic coastguard vessels and British trawlers and fishery protection craft after 1st September, attempts at settlement continued. On 25th September, 1958, the United Kingdom Government offered to place the legal aspects of the dispute before the International Court of Justice. As the Icelandic Government has not accepted the compulsory jurisdiction of the Court, its express concurrence was necessary before an appeal could be made. The Icelandic Government rejected the United Kingdom proposal as 'impracticable' in view of the possibility of a second Law of the Sea conference. A proposal first put forward at the informal NATO talks in August was broadened and reiterated by the United Kingdom Secretary of State for Foreign Affairs on 18th December, 1958. He proposed the setting up of a 'patrol-free belt' between the old four miles claim of 1952, plus a further two miles, and the twelve-mile limit claimed on 1st September. If the Icelandic Government would agree to confine the activities of its coastguard vessels to the first six miles United Kingdom protection vessels would be withdrawn outside the twelve-mile claim. In addition to interim measures of this nature the United Kingdom was prepared to discuss ways and means of resolving Iceland's economic difficulties.[1] On 3rd April, 1959, the Foreign Secretary repeated his proposal at the North Atlantic meeting in Washington.

In spite of the fact that both countries had important interests at stake in the definition of Iceland's fisheries limits and continued at loggerheads on the question of principle, the 1959 spring and summer fishing seasons passed off without serious incident. Restraint was exercised both by Icelandic coastguard and United Kingdom fishery protection vessels. In the summer months of 1959 the Royal Navy's role was largely confined to the provision of medical and technical assistance for the fishing fleets.

Economic Aspects of the Fisheries Dispute

That the fisheries are of great importance to the Icelandic economy is generally recognised by the United Kingdom and other affected governments. But it is held in the United Kingdom that, despite claims to the contrary, Iceland has not so far experienced a decline in the supply of fish for either home consumption or export as a result of the activities of foreign fishing vessels.

Cod and haddock account for nearly all the fish caught in the area. Using three immediate pre-war years and the most recent period for which complete figures are available, the following catch-pattern emerges:

Million kg.

Country	Average of the years 1936–38		Average of the years 1953–55	
	Quantity	Percentage	Quantity	Percentage
All countries	478	100	857	100
Iceland	149	31	384	45
United Kingdom	175	37	225	26
Germany	117	24	200	23
Other countries	37	8	48	6

In 1936–38 'Other countries' consisted of the Faroe Islands, France, Norway, Belgium and Denmark, in that order of importance. In 1953–55 the order was

[1]Text of speech, Atlantic Council Meeting, *The Times*, 19th December, 1958.

Belgium, Faroe Islands and Norway, with no other countries having a significant catch.

The table shows that the Icelandic catch grew two and a half times and its proportion from one-third to nearly one-half of the total from 1936 to 1955. Population growth in this period was from approximately 120,000 to 160,000 and, if catch per head is used as an index of productivity, the increase from 1,250 kg. per head in the first period to 2,400 kg. per head in the second shows how productivity has almost doubled. This is reflected in the catch of Icelandic fishing fleets, which increased every year from 323 million kilogrammes in 1950 to 397 million in 1955. Provisional figures for 1956, however, show no increase on 1955. The 1957 catch appears to have been a little smaller, although this is not necessarily due to over-fishing.

The United Kingdom's maximum post-1945 catch was in 1953, with 242 million kilogrammes. In 1957 it had declined to 208 million kilogrammes. Although the amount of fish caught has decreased, and although the United Kingdom share of the total catch has been reduced from 37 per cent to 26 per cent in the period represented by the table, the average United Kingdom catch for 1955–57 was 12 per cent above the average catch for 1936–38. This is a reflection of improved fishery techniques and of the general increase in the European demand for fish. British fishery statistics do not confirm that fish found off the Icelandic coast have declined with the increase in fishing effort. This is particularly true of cod, which represents 60 per cent by weight of the fish caught in those areas. Icelandic data on cod fishing also show that increased fishing effort has always resulted in an increased catch.

The United Kingdom catch of fish around Iceland is valued at approximately £9 million a year and represents in quantity about 40 per cent of the total catch of the distant water fleet. This is between 20 and 25 per cent of the total British catch in all waters. In June 1958, before the Anglo-Danish agreement on the Faroes fisheries, the UK Minister of Agriculture, Fisheries and Food stated that between 40 and 50 per cent of the catch around Iceland and the Faroe Islands, or about 13 per cent of the total British catch from all waters, was taken from within the proposed twelve-mile limit in the two areas.[1]

ILC REPORT: THE DIVERSITY OF VIEWS

Against a background of divergent views the International Law Commission issued in 1956 a report grouping together proposals and commentaries which had been adopted concerning the territorial sea, the contiguous zone, the high seas, the continental shelf, and the conservation of the living resources of the seas.[2] On 27th April, 1958, the final day of the Law of the Sea Conference of that year, a unanimous resolution paid tribute to the work of the International Law Commission, which had been established by the United Nations General Assembly in 1947 to promote 'the progressive development and codification of international law'. Their drafts and commentaries were declared to be '... of great juridical value'. The Commission's Report was used extensively in drafting the conventions developed by the conference although it made little contribution to an agreement on the breadth of the territorial sea and fishery limits. In acknowledging its failure in this respect the Report stated that:

'1. The Commission recognises that international practice is not uniform as regards the delimitation of the territorial sea.

2. The Commission considers that international law does not permit an extension of the territorial sea beyond twelve miles.

[1] *Hansard*, Vol. 589, Col. 655, 16th June, 1958.

[2] Report of the International Law Commission, 8th Session, GAOR (A/3159). See D. H. N. Johnson, *The Preparation of the 1958 Geneva Conference on the Law of the Sea*, International and Comparative Law Quarterly, January 1959.

3. The Commission, without taking any decision as to the breadth of the territorial sea up to that limit, notes, on the one hand, that many States have fixed a breadth greater than three miles and, on the other hand, that many States do not recognise such a breadth when that of their own territorial sea is less.
4. The Commission considers that the breadth of the territorial sea should be fixed by an international conference.'[1]

An earlier report of the International Law Commission had listed nine different, and largely irreconcilable, suggestions on what should be the breadth of the territorial sea.[2] Appendix I to this reference paper (pp. 20–23) lists the variety of claims which have been put forward in recent years. Appendix II (pp. 34–35) sets out the voting at the 1958 Law of the Sea Conference on the United States compromise proposal and on an eight-Power proposal for a breadth of up to twelve miles.

United Kingdom Views

Comments by governments on the International Law Commission's Report have been published as United Nations documents. The United Kingdom Government's support of a three-mile territorial limit was explained in a *note verbale* sent by the United Kingdom delegation to the Secretary-General of the United Nations on 20th September, 1957.[3]

An earlier United Kingdom commentary, of February 1955, on the draft proposals of the International Law Commission also dealt with the breadth and manner of delimitation of the territorial sea. It pointed out, firstly, that the breadth of the territorial sea is not a matter essentially within the domestic jurisdiction of States but, on the contrary, a matter regulated by international law.[4] It quoted from the judgment of the international Court of Justice in the *Anglo-Norwegian Fisheries Case* of 1951[5] to the effect that 'although it is true that the act of delimitation is necessarily a unilateral act, because only the coastal State is competent to undertake it, the validity of the delimitation with regard to other States depends upon international law'.

It then examined the three possible ways in which international law might regulate the breadth of the territorial sea—the *uniform, regional* or *local* solution. The facts that the seas encircle the globe, that regional and local solutions would create considerable practical difficulties and that different types of agreement would affect the international legal equality of States were among the factors that led the United Kingdom Government to favour the view that the real problem of the territorial sea was not that of deciding as between a uniform and a local solution of the problem but rather that of devising a framework in which a uniform solution, without losing its essential feature of uniformity, could be adapted to meet a variety of local factors. These local factors, it was suggested, could be divided into three categories: historical, geographical and economic. The first two were permissible in international law (cf., the doctrine of 'historic rights' and the *Anglo-Norwegian Fisheries judgment*). On the other hand, economic factors were held not to affect the actual breadth of the territorial sea, but to be questions falling under the régime of the high seas and subjects for inter-governmental arrangements for the conservation of the sea's resources, the granting of special rights in the continguous zone and the exploitation of the bed and subsoil of the continental shelf.

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[1]ILC Report, 8th Session (A/3159), Part I, Sec. II, Article 3.
[2]ILC Report, 6th Session (A/2693), para 68.
[3]UN Document, A/Conf. 13/5, pp. 87–88.
[4]ILC, UN Document A/CN. 4/90, p. 18.
[5]ICJ Rpts., 1951, p. 116. Also, see above, p. 6.

United States Views

Between 1793 and 1958 the United States was a firm adherent of the doctrine of a three-mile territorial limit in coastal waters. The following paragraph affirming this adherence is from a *note verbale* transmitted by the United States permanent delegation at the United Nations to the Secretary-General on 3rd February, 1955. It is part of a commentary by governments on the provisional Articles on the law of the sea adopted by the International Law Commission at its sixth session.

'That the breadth of the territorial sea should remain fixed at three miles, is without any question the proposal most consistent with the principle of the freedom of the seas. The three-mile limit is the greatest breadth of territorial waters on which there has ever been anything like common agreement. Everyone is now in agreement that the coastal State is entitled to a territorial sea to that distance from its shores. There is no agreement on anything more. If there is any limit which can safely be laid down as fully conforming to international law, it is the three-mile limit. This point, in the view of the Government of the United States, is often overlooked in discussions on this subject, where the tendency is to debate the respective merits of various limits as though they had the same sanction in history and in practice as the three-mile limit. But neither 6 nor 9 nor 12 miles, much less other more extreme claims for territorial seas, has the same historical sanction and a record of acceptance in practice marred by no protest from other States. A codification of the international law applicable to the territorial sea must, in the opinion of the Government of the United States, incorporate this unique status of the three-mile limit and record its unquestioned acceptance as a lawful limit.'[1]

The willingness of the USA and other leading States nevertheless to attempt to reach a compromise at the 1958 conference is summarised on pp. 14–16 of this reference paper.

Canadian Views

Since 1927 Canada has sought exclusive fishery jurisdiction within a limit of twelve miles, meanwhile exercising jurisdiction over three miles only. In its comments on the Articles concerning the law of the sea prepared by the International Law Commission at its eighth session, the Canadian Government stated that:

'The three-mile limit is not adequate for all purposes. It is not adequate for the enforcement of customs, fiscal and sanitary regulations. It is also not adequate for the protection and control of fisheries. The Commission has recognised in Article 66[2] the need for extended jurisdiction in respect of the enforcement of customs, fiscal and sanitary regulations. The Canadian Government considers it to be fully as important that the rules of international law should provide adequately for the regulation and control of fisheries off the coast of any State. One way of providing for this would be by accepting, for general application, the 12-mile breadth for the territorial sea. This would allow for complete fishery, customs, fiscal and sanitary control and regulation within that limit and dispense with the need for any provisions along the lines of those contained in Article 66. It is recognised, however, that a general extension of the breadth of the territorial sea to 12 miles could have consequences of importance with regard to the freedom of sea and air navigation. Instead,

[1] *Comments by Governments*, UN Doc., A/CN. 4/90, pp. 34–35.

[2] Article 66 of the ILC Report describes the purpose of a continguous zone and in what respects jurisdiction may be exercised in it. Fishery control and regulation are not referred to. For text of Article 66 see ILC Report, 8th Session (A/3159), Part II, Sec. 11, p. 11, or A/Conf. 13/5, p. 6.

therefore, of having a general adoption of the 12-mile breadth for the territorial sea an alternative approach which would not affect the rights of navigation by sea or air would be to agree on a contiguous zone of 12 miles as recommended by the Commission but with the modification that within the zone the coastal State should have the exclusive right of regulation and control of fishing.'[1]

Efforts to reach an agreement embodying these features may be seen in the first Canadian proposal submitted at the 1958 Law of the Sea Conference (see pp. 14–16).

Soviet Views

The Soviet Union's views on the breadth of the territorial sea were expressed in a debate in the General Assembly's legal committee on the International Law Commission's Report on its eighth session.[2] The Soviet delegate denied that a uniform solution to the problem of breadth was either just or practicable. He said that to assert that three miles was the only acceptable, and thus valid, principle was to ignore the fact that the extension of a State's jurisdiction was essentially a matter for that State alone, and that the majority of States claimed more than three miles. At the Law of the Sea Conference the Soviet Union proposed that a maximum breadth of twelve miles should be adopted, with individual States deciding what variations, or concessions to other States, they wished to exercise within the maximum limit (see p. 15).

CONFERENCE ON THE LAW OF THE SEA, 1958

The 1958 Conference on the Law of the Sea was held in Geneva from 24th February to 27th April, in accordance with General Assembly Resolution 1105 of 12th February, 1957, in order to examine the legal, technical, biological, economic and political aspects of the law of the sea.

The governments of 86 States were represented at the conference, together with observers from seven specialised agencies of the United Nations and nine interested inter-governmental organisations.

The conference divided its work up among several committees, the most important of which were:

The First Committee (Territorial Sea and Contiguous Zone);
the Second Committee (General Régime of High Seas);
the Third Committee (High Seas, Fishing and Conservation of Living Resources);
the Fourth Committee (Continental Shelf);
the Fifth Committee (Free Access to the Sea for Land-locked States).

The first four committees produced four separate conventions; but the convention produced by the First Committee, on the Territorial Sea and Contiguous Zone, does not cover the main matter at issue—the breadth of the territorial sea and the limits of exclusive fishing rights. As for the Fifth Committee, a preliminary conference of land-locked States was held at Geneva before the opening of the main Conference. This preliminary conference formulated certain principles to govern the maritime rights of land-locked States, which, in an amended form, were included as Articles 3 and 4 of the Convention on the High Seas and Article 14(1) of the Convention on the Territorial Sea and Contiguous Zone.

That the conference did not present a general convention on the law of the sea is accounted for by the fact that the topics dealt with by each of the first four Committees were considered to be so distinct that it would be more appropriate to make each of them the subject of a separate convention. This also

[1]Comments by Governments, UN Doc., A/Conf. 13/5, pp. 6–7.
[2]UN General Assembly, 11th Session, A/C.6/S.R.488, 3rd December, 1956.

had the additional advantage of enabling a State which was not prepared to accept one or more of the conventions to become a party to the other. In addition to the four conventions an Optional Protocol for the compulsory settlement of disputes, and a number of resolutions, were adopted.

All the instruments adopted by the conference were open for signature until the end of October 1958.[1] Ratifications of these signatures and accessions by new States may be accepted at any time. Twenty-two ratifications, or accessions, are required before any of the conventions come into force but it is too early to judge whether this will occur. On 4th May, 1959, Afghanistan, a land-locked State, ratified the Convention on the High Seas (see above). No other State had ratified this, or any of the other conventions, at the time of the preparation of this reference paper. (Signed but unratified conventions may acquire a degree of customary legal validity provided they represent sufficiently the practice, actual or desired, of States.)

The rest of this chapter on the Law of the Sea Conference of 1958 is divided into two parts. The first gives a brief account of the principal proposals put forward in both the First Committee and Plenary Session on the question of the breadth of the territorial sea, and of the voting upon them, and the second summarises selected aspects of the four conventions bearing on the question of the territorial sea, and also certain provisions in the conventions which constitute developments or innovations in international law.

Principal Proposals on the Law of the Territorial Sea[2]

The First Committee devoted its first thirty meetings to such matters as the contiguous zone, the right of innocent passage, civil jurisdiction over foreign vessels and other questions on which there was a fair measure of agreement. The first important proposal on the breadth of the territorial sea was not considered by the Committee until 31st March, 1958.

Resolutions on the breadth of the territorial sea took the form of amendments to the draft article (Article 3) drawn up by the International Law Commission in its Eighth Report (see pp. 10–11).

On 31st March, the Canadian delegation introduced in the First Committee an amendment to the International Law Commission draft to the effect that while territorial seas should remain at three miles, the coastal State should exercise exclusive fishery rights in a contiguous zone, not extending 'beyond twelve miles from the baseline from which the breadth of the territorial sea is measured' (A/Conf. 13/C.1/L.77/Rev. 1). In introducing the amendment the Canadian representative explained that as three miles was the breadth of territorial sea recognised by nations responsible for 80 per cent of the world's maritime traffic there was no reason why it should be changed provided a contiguous zone afforded sufficient control over fisheries. At the same time there was a combined Indian-Mexican proposal (A/Conf. 13/C.1/L.79) which provided that every State was free to fix the breadth of its territorial sea up to a maximum of twelve miles. No voting on the proposals took place at this stage.

The anxiety of the United Kingdom Government to reach a settlement satisfactory to all nations was reflected in a United Kingdom proposal on 2nd April.

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[1]The Conventions and Protocol were signed by the following number of nations: Convention on the High Seas (49), Continental Shelf (46), Territorial Sea and Contiguous Zone (44), Fishing and Conservation of Living Resources of High Seas (37). Optional Protocol (29). The United Kingdom signed all four conventions and the Optional Protocol.

[2]Resolutions and debates in both Plenary Sessions and the First Committee are to be found in the Official Record of the United Nations Law of the Sea Conference, Vol. II (Plenary) A/Conf. 13/38. and Vol. III (First Committee) A/Conf. 13/39. All references appearing after resolutions in this section are to these two documents.

This compromise measure (A/Conf. 13/C.1/L.134) would allow each State to claim up to six miles of sea, with exclusive fishing rights within the limit claimed only, and would preserve the rights of passage for aircraft or vessels outside a three-mile limit. The United Kingdom's departure from its traditional adherence to the three-mile limit was regretted by the United States delegation, which would rather have agreed to support the Canadian proposal, not as a bargaining manœuvre, but because of its belief that any extension of the territorial seas would meet with unforeseen difficulties. These early attitudes reflected the primary direction of interests. Later in the Conference the anxiety to reach a settlement acceptable to all parties produced various compromise proposals.

On 3rd April the Soviet delegate introduced in the Committee his Government's proposed amendment to Draft Article 3. He remarked on the International Law Commission's failure to agree upon a uniform breadth, and also the great diversity of State practice, and proposed that each nation should determine the breadth of its territorial sea within the limits of three to twelve miles (A/Conf. 13/C.1/L.80). In determining the breadth of its territorial sea a nation should consider historical, geographical, economic and security factors, as well as the interests of international navigation. Gradually the number of proposals in favour of a territorial sea or fishery jurisdiction in excess of three miles was increasing.[1]

On 16th April the United States, despite its traditional support of a three-mile limit, proposed a six-mile belt of territorial sea with a further six miles for fishery purposes; however, the rights of the coastal State, in this peripheral six-mile fisheries belt, would be shared with other States which had been fishing regularly within twelve miles of the coast for eight to ten years previously (A/Conf. 13/C.1/L.159). Two days later, in a slightly amended proposal, this time limit was reduced to five years in order to meet objections raised on the grounds that, in the aftermath of the second world war, fishing fleets were in a very unsettled condition.[2] On the same day, 16th April, the Canadian delegation, in a three-Power proposal with India and Mexico, also abandoned the three-mile limit and proposed that States could claim up to six miles territorial sea with a further six miles for exclusive fisheries jurisdiction. In addition, if a twelve-mile territorial sea had been proclaimed before the opening of the Conference this should also be recognised (A/Conf. 13/C.1/L.77/Rev. 2). In introducing his proposal the Canadian delegate asserted that the United States reservation '... in favour of certain foreign nations would make the whole idea of a twelve-mile fishing zone entirely meaningless'. He argued that 'new and remarkable' fishing vessels would not only injure the coastal fishing population but would also bring about an ultimately dangerous diminution in the world's fish supply. The Canadian delegate maintained that the new proposal embodied the basic features of the American amendment, as well as securing the twelve-mile fisheries zone unreservedly for the coastal State and recognising that established claims to zones jurisdiction between six and twelve miles 'could not be impugned'.[3]

On 18th April the Canadian delegate abandoned his proposal of the 16th as it had 'not met with the support which its sponsors had hoped for'. The new, and final, Canadian proposal (A/Conf. 13/C.1/L.77/Rev. 3) differed from the

[1]A/Conf. 13/C.1/L.79	India and Mexico	29th March
" " L.80	USSR	31st March
" " L.82	Colombia	31st March
" " L.133	Peru	1st April
" " L.77 Rev. 2	Canada, India, Mexico	16th April
" " " Rev. 3	Canada	17th April

[2]A/Conf. 13/39, p. 166.

[3]A/Conf. 13/39, p. 154.

first two in that it recognised neither the three-mile nor the twelve-mile territorial sea. Instead it contained the simple 'six plus six' concept of a six-mile territorial sea and a six-mile contiguous zone for exclusive fishery purposes. At the morning session on the same day, 18th April, the United Kingdom delegation had moved away from their compromise proposal of 2nd April (see pp. 14–15), and announced support for the new American proposal introduced two days earlier (see p. 15). This was done on the assumption that if established rights of innocent passage were maintained it would not be necessary to oppose the extension of territorial limits to six miles. It was made clear that it was only because the US proposal was a sincere and genuine attempt to meet different interests and points of view and to bring the conference to a successful conclusion on the major issues before it, that the United Kingdom delegation had reluctantly decided to support it.

On 19th April, the American amendment was rejected by 38 votes to 36, with nine abstentions.[1] The revised Canadian proposal was also rejected, with the exception of a paragraph declaring that a State can exercise fishery rights in a contiguous zone up to twelve miles from the coast. This was not approved in Plenary Session. Other proposals, including that of the Soviet Union, were also rejected.

At the following six meetings of the First Committee agreements were reached on matters other than the breadth of the territorial seas, such as its delimitation in different circumstances, its juridical status and the juridical status of the air above it. On 23rd April the United States delegate announced that he intended to reintroduce the proposal which the Committee had rejected on 19th April. After considerable opposition, a motion to introduce the proposal in Plenary Session was approved in Committee on 24th April, 1959.

On 25th April, at the 14th Plenary Session of the Law of the Sea Conference, the United States proposal failed to get a two-thirds majority. Voting was: 45 in favour with 33 against and 7 abstentions. The proposal came nearer to adoption than any of the others. Other important proposals which were rejected on 25th April were the Soviet and eight-Power resolutions, both of which permitted an extension of territorial seas up to a maximum of twelve miles.[2] (For particulars of voting, see Appendix II.)

On 27th April, the last day of the Conference, at the 21st Plenary Session, a four-Power resolution[3] (A/Conf. 13/L.49) which, *inter alia*, recommended that, pending the outcome of further discussions, States should voluntarily refrain from extending the limits of their territorial sea was replaced by a Cuban resolution (A/Conf. 13/L.25) calling for a second meeting of plenipotentiaries to consider the breadth of the territorial sea. This was approved and incorporated as a resolution as part of the work of the conference.

At the 21st Plenary Session the United Kingdom delegate stated that as the United Kingdom compromise proposals had not been accepted his country '. . . must therefore resume its original position as a supporter of the three-mile limit'.[4] Both the United States and French delegations had already issued similar statements.

Shortly after the 1958 conference the view developed that a compromise had been hindered by the presence of a high proportion of States not seriously interested in the problem of the width of the territorial sea. The idea was therefore canvassed of regional, rather than world-wide, consultation. The subsequent convening of a second international conference has made this unnecessary.

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[1] Simple majority only required in Committee.
[2] A/Conf. 13/38, pp. 35–39.
[3] Australia, Canada, Ceylon, Ghana.
[4] A/Conf. 13/38, p. 76.

Summary of the Conventions Adopted

The Convention on the Territorial Sea and Contiguous Zone

The Convention on the Territorial Sea and Contiguous Zone consists of thirty-two Articles covering the juridical status of the territorial sea, methods of delimitation, the right of innocent passage and the principle of the contiguous zone. It does not deal with the maximum breadth of the territorial sea or with the maximum limits of exclusive fishery rights.

Article 3 confirms that the low-water mark is normally the baseline from which the territorial sea is measured, regardless of the breadth. The following Article describes the special circumstances in which a straight baseline can be employed, i.e. in localities where the coastline is deeply indented and cut into, and if there is a fringe of islands along the coast in the immediate vicinity. An attempt to fix the maximum length of these lines at fifteen miles failed to receive a two-thirds majority in Plenary. Article 5 ensures that the right of innocent passage will be observed in waters formerly high seas. The conference decision to fix maximum closing lines for bays at twenty-four miles represented an increase of nine miles on the International Law Commission draft, but nevertheless was accepted by the United Kingdom Government as a recognition of the need to fix a definite spatial limitation on bay definition.

Article 10 of the convention gives each island its own territorial sea and thereby removes any legal justification for claiming large tracts of water by joining up the islands of an archipelago and claiming the enclosed seas as internal waters.

The failure of the Hague Codification Conference of 1930 was largely the failure to reach agreement on the concept of the contiguous zone. The United Kingdom contributed to the solving of this problem by announcing in 1952 that it was prepared to accept the International Law Commission draft on the contiguous zone on the understanding that jurisdiction within it was confined to sanitary, customs and fiscal matters. Article 24 of the Convention established the new principle along the lines suggested in the 1952 declaration. This legally valid extension of jurisdiction for specific purposes is also regarded as a means of limiting indiscriminate extension of territorial limits.

Two important principles relating to innocent passage are established in Section III of the convention. The right of all ships, including warships, is upheld to innocent passage through territorial seas, territorial straits and waters customarily used for international navigation.[1] A further important principle which was adopted is a criterion of innocent passage relating to the nature of the passage, rather than the nature of the vessel.[2] Consequently even a warship must be considered innocent if the reasons for the passage are not hostile to the coastal State.

The Convention on the High Seas

The Convention on the High Seas contains an Article (Article 23) dealing with the right of hot pursuit of a foreign ship beyond the territorial sea or contiguous zone when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State. An innovation relevant to the question of the territorial sea is that hot pursuit may begin in the contiguous zone if there has been a violation of the rights for the protection of which the contiguous zone had been established.

Nationality of Ships: Article 5 of the Convention on the High Seas established the principle that there must be a 'genuine link' between a State and the ship

[1] See the *Corfu* Channel Case, ICJ Reports, 1949, p. 4.

[2] 'Passage is innocent as long as it is not prejudicial to the peace, good order or security of the coastal State'. Article 14, para. 4.

to which it gives its nationality. This was defined as meaning effective '... jurisdiction and control in administrative, technical and social matters over ships flying its flag'. This principle, if made effective, would have important effects in the matter of 'flags of convenience'.

Government Ships: According to the doctrine *par in parens non habet imperium*, no State can claim jurisdiction over another State, or its property. The doctrine of immunity for government ships was upheld with varying degrees of firmness when such ships consisted either of the navy of that State, or of private ships requisitioned at times of emergency.[1] The development of State control in many branches of economic and social activity meant that certain governments began to claim State immunities for activities which in other countries were conducted by private individuals. The International Law Commission's proposed Article on government ships recognised this practice and provided that government ships, whether commercial or non-commercial, should have the same immunities as warships. Article 9 of the High Seas Convention reversed this suggestion and drew a distinction between commercial and non-commercial vessels, attributing full State immunity only to the latter. This modification was strongly opposed by the Soviet *bloc* delegations at the conference.

Collision: Art. 11, para. 1, of the High Seas Convention lays down the procedure for taking disciplinary action against the captain or any other person in the service of the ship involved in collision. In providing that such proceedings can be instituted only before the judicial or administrative authorities either of the flag State or the State of which the person involved is a national, the Article follows Article 1 of the Brussels Convention of 10th May, 1952, and does not follow the controversial decision of the Permanent Court of International Justice in the *Lotus* case.[2] In that case Turkey's right to take proceedings against the master of a French vessel, which had collided with a Turkish ship, was upheld.

Other Decisions: Other important decisions embodied in the High Seas Convention concerned the definition and control of piracy, the prevention of slave-trading, the protection of submarine cables and measures against the pollution of the sea by radioactive waste and oil.

The Conventions on Fishing and the Conservation of the Living Resources of the High Seas, and on the Continental Shelf

Before the Law of the Sea Conference opened there was a feeling that the solution of the problem of the territorial sea could be assisted by solving connected problems. Two such problems have already been mentioned: the contiguous zone and the question of innocent passage. A further aspect which it was hoped would, if agreed upon, contribute to the solution of the main problem was that of conservation of the resources of the sea. If agreement could be reached on non-discriminatory conservation measures the need to extend territorial limits for conservation purposes would be removed.

The Convention on Fishing and Conservation of the Living Resources of the High Seas defines what is meant by conservation, makes provision for multilateral conservation arrangements and, subject to a number of safeguards, permits a coastal State to adopt unilateral measures of conservation if it has been unable previously to reach agreement with the other States concerned on the necessary conservation measures. If such measures are not accepted by the other States concerned any of them may initiate the arbitration procedure for

[1] See *Schooner Exchange 'v.' McFaddon*, U.S. Supreme Court, 1812. *The Parlement Belge*, Probate Division and Court of Appeal, 1879–89. *The Aranzazu Mendi*, House of Lords, Appeal Cases, 1939.

[2] PCIJ, the ss *Lotus*, 1927, Series A, No. 10.

which Articles 9, 10, 11 and 12 of the convention provide. The usefulness of the convention is restricted, however, by the failure to agree on the central problem—the breadth of the territorial sea: for if States can claim that their conservation measures are taking place within territorial waters they need not observe the internationally agreed procedures on conservation. Further criticisms which have been made are that the failure to define 'adjacency' in the sentence 'high seas adjacent to the territorial seas' gives too much flexibility to the conserving State, and that the preliminary procedures required before the arbitral commission can give its decision tend to favour States acting against the interests of other States on the pretext of conservation.[1]

The *Convention on the Continental Shelf* provides a definition of the continental shelf which by introducing the concept of exploitability gives rise to uncertainties and so may result in disputes.[2] The convention provides that the coastal State exercises over the continental shelf sovereign rights for the purpose of exploiting and exploring its natural resources. The term 'natural resources' is defined so as to exclude swimming fish and crustacea. This is a rejection of the view, held by some States, that the possession of a continental shelf gives them the exclusive right of fishing over the continental shelf. Such a view is also entirely inconsistent with Article 3 of the convention which provides that the rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters as high seas.

Resolutions

In addition the conference adopted resolutions on the following subjects: nuclear tests on the high seas, pollution of the high seas by radioactive material, international fishery conservation conventions, co-operation on conservation measures, humane killing of marine life, special situations relating to coastal fisheries, régime of historic waters, convening of a second United Nations conference on the Law of the Sea and finally a tribute to the International Law Commission.[3] Those resolutions relevant to the question of territorial seas have been referred to in the course of this paper.

[1] See D. H. N. Johnson, *The Geneva Conference on the Law of the Sea*, Year Book of World Affairs, 1959, Vol. 12, pp. 90–91.
[2] Report on the Conference, UK Government White Paper, Cmnd. 584, pp. 11–12.
[3] Annex. A/Conf. 13/L.56 (A/Conf. 13/38), 'Resolutions adopted by the United Nations Conference on the Law of the Sea'.

APPENDIX I

State Practice on the Breadth of Zones Contiguous to Coasts

The following table is based on one prepared by the United Nations Secretariat (A/Conf. 13/C.1/L.11, Rev. 1), and submitted to the delegations at the 1958 conference with a note emphasising its tentative character and stating that it did not purport to be exhaustive or to afford a completely accurate statement of the positions of the States listed in the table.

The present table is substantially the same, except that some footnotes have been added where there have been subsequent alterations of claims. Certain States which did not provide information to the Secretariat have been omitted.

One mile is equal to 1·852 kilometres.

States	Breadth of T'torial Sea	Continental Shelf	Limits for Special Purposes						
			Customs	Security	Criminal J'diction	Civil J'diction	Fishing	Neutrality	Sanitary Regulations
Albania	10 miles (1952)								
Argentina	3 miles (1869)	(1946) Including sovereignty over superjacent waters	12 miles (1869)	12 miles (1869)			10 miles (1907)		
Australia	3 miles (1878)	(1953) Not affecting superjacent waters. Pearl Fisheries Act (1952–53)[1]	3 miles (1901–54)		3 miles (1878)	3 miles (1912–32)			
Belgium	3 miles (1929)		10 km. (1852)				3 miles (1891)	3 miles (1939)	

Brazil	3 miles (1950)	(1950) Not affecting navigation or fishing rights					12 miles (1938)	3 miles (1914)	
Bulgaria	12 miles (1951)								
Cambodia	5 miles (2) (1957)	(1957) To a depth of 50 metres. Including sovereignty over superjacent waters	12 miles (1957)	12 miles (1957)			12 miles (1957)		
Canada	3 miles		9 miles(3) (1952–55)		3 miles (1954)	3 miles (1934)	12 miles(4) (1952)		
Ceylon	6 miles (1957)		6 miles (1952)				100 miles (1957)		
Chile	50 km. (1941)	(1947) 200 miles. Including sovereignty over superjacent waters	100 km. (1948)	100 km. (1941)					

[1]The Pearl Fisheries Act (1952–53) regulates the taking of Pearl Shell, Trochus, Bêche-de-mer or Green Snail from areas defined as continental shelf.

[2]Measured from straight baselines.

[3]Measured from outer limit of Canadian Territorial Waters [3 miles]. Where Limits for Special Purposes do not include footnotes explaining systems of measurement it is from the coastline.

[4]Revised version of 1927 Act mentioned in text, p. 12.

APPENDIX I. **State Practice on the Breadth of Zones Contiguous to Coasts** (continued)

States	Breadth of T'torial Sea	Continental Shelf	Limits for Special Purposes						
			Customs	Security	Criminal J'diction	Civil J'diction	Fishing	Neutrality	Sanitary Regulations
China[1]	3 miles (1930)		12 miles (1934)						
Colombia	6 miles (1930)		20 km. (1931)				12 miles (1923)		12 miles (1923) Pollution of Sea
Costa Rica	In accordance with international law (1949)	(1949) 200 miles including sovereignty over the superjacent waters					200 miles (1949)		
Cuba	3 miles (1942)		12 miles (1942)	3 miles (1936)	3 miles (1936)		3 miles (1936)		5 miles (1936) Pollution of Sea
Denmark Greenland	3 miles		4 miles (1928)				3 miles (1951) 3 miles (1953)		

Faroe Islands							Specia limit (1959)		
Dominican Republic	3 miles (1952)		12 miles (1952)	12 miles (1952)			12 miles (1952)		12 miles (1952)
Ecuador	12 miles (1950)	To a depth of 200 metres. (1950) including sovereignty over superjacent waters							
El Salvador	200 miles (1950)	200 miles (1950) including sovereignty over superjacent waters.	12 miles (1933)	12 miles (1933)			200 miles (1955)		
Ethiopia	12 miles (1953)						12 miles (1953)		
Finland	4 miles[2] (1956)		6 miles (1939)						

[1]This refers to Nationalist China. The People's Republic of China extended its territorial sea to 12 miles in September 1958.
[2]Measured from straight baselines drawn between points not more than 8 miles apart.

APPENDIX I. **State Practice on the Breadth of Zones Contiguous to Coasts** (continued)

States	Breadth of T'torial Sea	Continental Shelf	Limits for Special Purposes						
			Customs	Security	Criminal J'diction	Civil J'diction	Fishing	Neutrality	Sanitary Regulations
France Algeria	3 miles (1928)		20 km. (1948)	3–6 miles (1934)			3 miles (1928) 3 miles (1928)	6 miles (1912)	
Germany (Federal Republic)	In accordance with international law (1956)		3 miles (1939)						
Greece	6 miles (1936)			10 miles (1913)				6 miles (1914)	
Guatemala	12 miles (1934)	(1956) not affecting free maritime and air navigation	12 miles (1934/39)					12 miles (1940)	

Honduras	Decree of Dec. 1957 does not specify any limit, but reserves right to determine any limit in the future	(1957) 200 metres or to where depth admits of exploitation. Seabed and subsoil only	6 miles (1925)						
Iceland		(1948) Relates to conservation of fisheries only.	4 miles (1935)				4 miles[1] (1948)		
India	6 miles (1956)	(1955) Seabed and subsoil only							
Indonesia	12 miles[2] (1957)								
Iran	12 miles (1959)	(1955) Seabed and subsoil only	12 miles (1934)	12 miles (1934)					

[1]Measured from straight baselines drawn between defined points. See pp. 7–10 of this reference paper for recent claim.

[2]Measured from straight baselines drawn between the outermost points of the islands claimed as part of the Indonesian archipelago. See p. 5 of reference paper.

APPENDIX I. **State Practice on the Breadth of Zones Contiguous to Coasts** (continued)

States	Breadth of T'torial Sea	Continental Shelf	Limits for Special Purposes						
			Customs	Security	Criminal J'diction	Civil J'diction	Fishing	Neutrality	Sanitary Regulations
Iraq	12 miles (1958)								
Irish Republic	In accordance with international law						3 miles[1]		
Israel	6 miles (1956)	(1952) Not affecting superjacent waters			6 miles (1955)		6 miles (1937)		
Italy	6 miles (1942)		12 miles (1940)	10 miles (1912); in time of peace			7 miles (1912)		
Japan	3 miles (1956)							3 miles (1928)	10,000 metres (1948) Pollution of Sea
Jordan	3 miles (1943)						3 miles (1943)		

Korea, Republic of		(1952) Including sovereignty over superjacent waters					50–60 miles		
Lebanon			20 km. (1954)		20 km. (1943)		6 miles (1921)		
Liberia	3 miles (for all purposes)								
Libya	12 miles (1959)		10 miles (1955)				6 miles (1939)		
Malaya	3 miles								
Mexico	9 miles (1944)	(1945) Not affecting right of free navigation					See under continental shelf		

[1]An order was issued by the Irish Government on 23rd October, 1959, defining fishery control limits by reference to baselines drawn from headland to headland. The order was due to come into force on 1st January, 1960.

APPENDIX I. **State Practice on the Breadth of Zones Contiguous to Coasts** (continued)

States	Breadth of T'torial Sea	Continental Shelf	Limits for Special Purposes						
			Customs	Security	Criminal J'diction	Civil J'diction	Fishing	Neutrality	Sanitary Regulations
Monaco	According to international law (1955)								
Morocco							6 miles (1924)		
Netherlands	3 miles (1889)						3 miles (1952)	3 miles (1939)	
New Zealand	3 miles (1908)						3 miles (1950)		
Nicaragua		(1950) Including sovereignty over the superjacent waters							

Norway	4 miles (1812)		10 miles (1932)				4 miles (1906)	4 miles	
Pakistan	3 miles (1878)	(1950) 100 fathom line and seabed only					3 miles (1897)		
Panama	12 miles (1958)	(1946) Including sovereignty over the superjacent waters					(1946) Extends over area of sea above continental shelf		
Peru		(1947) 200 miles including sovereignty over the superjacent waters					200 miles (1947)		
Philippines[1]									

[1]The position of the Philippines is shown in Document A/CN.4/99 (Yearbook of the International Law Commission, 1956, Vol. II, pp. 69–70).

APPENDIX I. **State Practice on the Breadth of Zones Contiguous to Coasts** (continued)

States	Breadth of T'torial Sea	Continental Shelf	Limits for Special Purposes						
			Customs	Security	Criminal J'diction	Civil J'diction	Fishing	Neutrality	Sanitary Regulations
Poland	3 miles (1932)		6 miles (1933)	6 miles (1932)					
Portugal	6 miles (1885/1927)	(1956) To a depth of 200 metres. Seabed and subsoil only, not affecting superjacent waters	6 miles (1941)				Reciprocal (1917)		6 miles (1928) Pollution by oil
Roumania	12 miles (1956)								
Saudi Arabia	12 miles (1958)	(1949) Jurisdiction and control over seabed and subsoil only	18 miles (1958)	18 miles (1958)					18 miles (1958)
Spain	6 miles (1765–1957)		6 miles (1948)				6 miles (1909–33)		

Sweden	4 miles (1938)		4 miles (1927)					4 miles (1938)	
Thailand	6 miles (1958)						12 miles (1958)		
Tunisia	3 miles (1951)						50 metres depth of water (1951)		
Union of South Africa	3 miles (1935)		3 miles (1955)				3 miles (1955)		3 miles (1919)
USSR	12 miles								
United Arab Republic	12 miles								

APPENDIX I. ***State Practice on the Breadth of Zones Contiguous to Coasts*** (continued)

States	Breadth of T'torial Sea	Continental Shelf	Limits for Special Purposes						
			Customs	Security	Criminal J'diction	Civil J'diction	Fishing	Neutrality	Sanitary Regulations
United Kingdom	3 miles (1878)		3 miles (1952)		3 miles (1878)		3 miles (1933)		
Arab States under Protection		(1949) Seabed and subsoil only. Not affecting superjacent waters							
Bahamas		(1948) ,, ,,							
B. Guiana		(1954) ,, ,,							
B. Honduras		(1950) ,, ,,							
Brunei		(1954) ,, ,,							
Falkland Isles		(1950) ,, ,,							
Jamaica		(1948) ,, ,,							
North Borneo		(1954) ,, ,,							
Sarawak		(1954) ,, ,							

United States	3 miles (1953)	(1945) Seabed and subsoil only. Not affecting superjacent waters	12 miles (1930)						3 miles (1924) Pollution by oil
Uruguay	6 miles (1930 Codification Conference)						3 km. (1900)	5 miles (1914)	
Venezuela	12 miles (1956)		12 miles (1944)	12 miles (1944)				3 miles (1939)	12 miles (1939)
Yugoslavia	6 miles (1948)		6 miles (1949)				10 miles (1950)		

APPENDIX II

Voting on the Main Proposals on the Breadth of the Territorial Sea

For the background to the United States proposal (A/Conf. 13/C.1/L.159/Rev. 1) and the eight-Power proposal (A/Conf. 13/L.34) see pages 14–16 of this reference paper. The Soviet proposal (A/Conf. 13/L.30) put forward at the Fourteenth Plenary Session of the Conference was substantially the same as the eight-Power resolution in that both permitted an extension of territorial seas up to a maximum of 12 miles. Voting on the Soviet proposal was 21–47–17.

State	US Proposal 6 miles (+6 with historic fishing rights)	Eight-Power Proposal 12 miles Max.
Afghanistan	‡	*
Albania	†	*
Argentina	†	*
Australia	*	†
Austria	*	‡
Belgium	*	†
Bolivia	*	*
Brazil	*	†
Bulgaria	†	*
Burma	†	*
Byelorussian SSR	†	*
Cambodia	*	*
Canada	†	†
Ceylon	*	*
Chile	†	*
China	*	†
Colombia	†	*
Costa Rica	‡	*
Cuba	*	†
Czechoslovakia	†	*
Denmark	*	†
Dominican Republic	*	†
Ecuador	†	*
El Salvador	†	†
Finland	‡	‡
France	*	†
German Federal Republic	*	†
Ghana	*	*
Greece	*	†
Guatemala	†	*
Haiti	*	†
Holy See	*	‡
Honduras	*	†
Hungary	†	*
Iceland	†	*
India	*	‡
Indonesia	†	*
Iran	*	*
Iraq	‡	*
Ireland	*	†
Israel	*	†
Italy	*	†

State	US Proposal 6 miles (+6 with historic fishing rights)	Eight-Power Proposal 12 miles Max.
Japan	‡	†
Jordan	†	*
Korea, Republic of	†	‡
Laos	*	‡
Lebanon	†	*
Liberia	*	†
Libya	†	*
Luxembourg	*	†
Malaya, Federation of	*	*
Mexico	†	*
Monaco	*	†
Morocco	†	*
Nepal	‡	*
Netherlands	*	†
New Zealand	*	†
Nicaragua	*	‡
Norway	*	†
Pakistan	*	†
Panama	†	*
Paraguay	*	†
Peru	†	*
Philippines	‡	‡
Poland	†	‡
Portugal	*	†
Roumania	†	*
San Marino, Republic of	*	†
Saudi Arabia	†	*
Spain	*	†
Sweden	*	†
Switzerland	*	†
Thailand	*	†
Tunisia	†	*
Turkey	*	†
Ukrainian SSR	†	*
Union of South Africa	*	†
USSR	†	*
United Arab Republic	†	*
UK	*	†
USA	*	†
Uruguay	†	*
Venezuela	†	*
Vietnam, Republic of	*	†
Yemen		
Yugoslavia	†	*
	45–33–7	39–38–8

Voting for .. .. *
against .. †
abstained .. ‡

No proposal gained the necessary two-thirds majority of those present and voting.

[1] *Hansard*, 7th–9th April, 1959. Written Answers, Col. 16.