TERRITORIAL SEAS SESSION

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The Progress of the Law of the Sea as to Fisheries – Geneva 1972

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In discussing a subject as complicated as fisheries law of the sea, one cannot always presume a sophisticated audience. On the other hand, too labored a background may tend to bore those well-acquainted with the subject.

We are now engaged in preliminary conferences through committees appointed by the United Nations. This series of committee conferences has been going on for 2 years, at the rate of 2 or 3 months a year. To highlight the deliberate speed of the project, I point out that the present "committee" is composed of some 86 members, each of whom may speak to the point. In 1958 and 1960 the *total* number of nations participating in the Geneva Conference was only 86. There are now more than 130 nations members of the United Nations, and the latest additions are the "newly emerging" ex-colonials who protest loudly that they had no voice in formulating the basic maritime law of nations, but they *will* now be heard. Also a recent and vocal addition is the People's Republic of China, which takes every occasion to engage in diatribes against the "superpowers" and the "hegemony."

If it is true that politics makes strange bed-fellows, imagine on a global basis the effect of the several blocs of nations arguing among themselves to reach fixed and final positions to which they can then adhere positively and, by sheer weight of numbers, control the outcome of events. To name a few, there are the "Latin-American," the "Afro-Asian," the "Landlocked and Shelf-locked," the "European" and others.

For working purposes the Preparatory Plenary Committee has three sub-committees. The diversity of subjects adds more complication, and this is especially hard on those smaller nations which do not have large staffs, and which must keep up with all of the papers ground out by the duplicating machines. I have

accumulated files fully 2-feet thick, and weighing countless pounds. Among the subjects are: the regime of the deep sea bed, pollution, scientific research, fisheries, territorial sea, passage through international straits and problems in connection with the definition and uses of the Continental Shelf and Slope.

The basic disagreement is not a new one. It concerns the width of the territorial sea. No agreement was reached at the Hague Conference in 1929, nor at Geneva in 1958 and 1960. The maritime powers need a narrow territorial sea to maneuver their fleets, and they also want passage through strategic straits throughout the world. Likewise the nations that fish off other nations' coasts prefer a narrow territorial sea, for example, the United Kingdom off Iceland. The extremes are (1) a narrow territorial sea of not more than 12 miles versus (2) seas up to 200 miles for sovereignty.

Since 1960 there has been developed the concept that there may be several "seas" for several reasons. There is almost universal agreement, really, that a nation may have a 12-mile territorial sea, where its sovereignty is as supreme as on land, and have beyond this some kind of jurisdiction over adjacent waters, for fisheries, pollution, control of smuggling or what have you. This area has been referred to as a "contiguous zone." How to define it is a real problem and causes wide divergences of opinion.

This concept is further complicated by the continental shelf doctrine, which became new law of the sea in 1958. Here the nations with large continental shelves do very well, whereas those with narrow shelves, or those landlocked, get little or nothing. Essentially the continental shelf comprises only the seabed and subsoil, presently omitting fisheries, but is important because of oil and minerals. Where does it end? The present unsatisfactory formula says: to a depth of 200 meters (about the 100-fathom line) or to the limits of exploitability. Under modern technology, who can define the limits of exploitability?

We can define the argument in simple terms. *Who* gets the oil? *Who* gets the minerals? *Who* gets the fish?

Under a now-hallowed slogan enunciated by Malta there is much talk about "the benefit of all mankind." This is a global profit-sharing scheme, in which the haves divide up with the have-nots. There are always more have-nots, and since each nation, large or small, has one vote, any final formula seems destined to aid the under-privileged. It is true that this slogan was developed in connection with the new and unknown deep seabed resources, which have not previously been covered under international law. It is also true that the only nations with money and technology capable of operating in the deep seabed are the large developed nations.

Matters needing resolution are, for example: Where does the continental shelf end? Where does the continental slope end? Where does the continental rise begin? If you can't answer these, how do you know where the deep seabed and ocean abysses are? Geographers are in great demand for technical reasons, but decisions as to voting are in the hands of diplomats and legal people, and the reasons for voting, nation by nation, arise from self-interest, and there is a great hue and cry from smaller nations, particularly, to seek aggrandizement of their territory by going to sea.

Up to now, we have said little about fisheries. We have learned that the living resources of the sea are not inexhaustible. In many areas of the world, as in the North Sea, groups of nations have reached reasonably good agreements concerning *who* gets the fish under optimum conservation measures.

Under ancient law, like the law of hunting, the hunter who subdued the beast, or the fish, owned it. Now it appears that many nations wish to shrink the fishable oceans by an enlargement of national boundaries which would leave little to outsiders, as there are not too many fish far away from shore.

One cannot quarrel with the concept that the under-privileged nations need more protein. But this is not the effect attained by enclosing large areas of the ocean under contiguous zones. The extreme objective sought is *ownership* of the resources, and the right to license others to fish within that area. Some nations have openly declared that they expect to make plenty of money out of this, and others have said they will license only neighboring nations, and will exclude the traditional distant-water fishing nations. With no financial limit on licenses, the licensor may set an exorbitant price which amounts to total exclusion. What happens, then, to annual sea-crops like shrimp? If uncaught, they are lost to the food supply of the world. It is for this reason that we, in shrimp, have fought to have acknowleged the principle of under-utilization; that it is not right "for the benefit of mankind" that the unused living resources of the sea should go unharvested.

Drawing lines in the ocean is a politician's way of trying to deal simply with a complex problem. It is an old adage that fish do not recognize such lines. Unfortunately, the politicians do not listen to the scientists. Any reputable fisheries biologist will tell you that to manage a fishery properly you need control over the stock of that fishery, that is, the entire population, as well as control over the ecology, which includes pollution, estuaries and a multitude of other matters. The area of control should go as far as the fish go. If the stock occurs off the coasts of more than one nation, then those nations concerned should get together on the management problem. When it comes to *sharing the catch,* it may happen that at the harvestable stage the fish are gathered in one place, so where several nations are concerned, the *sharing* is also a matter to be negotiated. Otherwise, one nation can take all of the fish stock before it is full grown, simply because it crossed an imaginary line in the water, and play hob with proper management, and even kill the stock because it did not allow growth to maturity and spawning age.

Our trouble with getting a proper world-wide convention on a sound scientific basis is that it is almost too complex to put down on paper, and that many diplomats who control their nation's votes like simpler solutions. And yet the United States, which has both a large coastal fishery and a respectable distant-water fishery in tuna and shrimp, is doing its best to bridge the gap between the extremists by proposing such intermediate solutions. The role of arbiter is a difficult one. When you are in the middle, distant-water fishing nations such as Russia and the United Kingdom swear at you for going too far, and the newly-emerging African nations swear at you for not going far enough.

What is the essence of the United States' position on fisheries? It is contained in the latest U.S. proposal, August 4, 1972, at Geneva, and fully explained by a major intervention (or speech) by Ambassador McKernan on the same date. It was reinforced on August 10, 1972, by an intervention by Ambassador John R. Stevenson, Legal Advisor to the Department of State and Head of the United States Delegation to the Law of the Sea Conference. Mr. Stevenson said, in part:

> "Our basic interest is to assure rational use and conservation of all fish stocks. . . . We can support broad coastal State jurisdiction over coastal and anadromous fisheries beyond the territorial sea subject to international standards designed to assure conservation, maximum utilization and equitable allocation of fisheries, with compulsory dispute settlement, but with international regulation of highly migratory species such as tuna. . . ."

Such a laudable aim can be achieved by the scientific treatment of fisheries on a proper management theory. The coastal state, it is admitted, has a major interest in the nearby fish. Therefore this formula gives them substantial jurisdiction over all fisheries, except migratory tuna, but it also requires of management that it be sound and reasonable, a steward for the world, as it were, and accountable for its actions. If the coastal nation can take *all* of the fish nearby, let it do so, but do not let the unused fish stagnate and die.

I mention that salmon are protected in the United States proposal by a formula that protects a fishery that originates in the fresh waters of a nation, and on which that nation spent large sums to improve and increase the stock.

Last year I was supposed to talk to this meeting about the fishing industry's reaction to our government and its handling of fishery matters internationally. Unfortunately I was hospitalized, but I did send you a report which was read; I said then that we were most unhappy with government. We had been shut out at the council table, and other interests were superimposed upon the interests of fisheries. We have come the full cycle. The protests by the fishing industry to the President and the Congress were effective. Fishing industry advisors were again designated as members of the United States delegation and I can report to you happily that we were fully consulted and participated completely in the affairs of the delegation, as in the days of yore.

I cannot predict that the United States position paper will meet with overwhelming approval at a world conference on fisheries, but it is a sound, reasonable and scientific approach of which we can be proud, and it is possible that with a little give-and-take in the high-flown area of world diplomacy, the essence of our proposal may meet with sufficient approval to become the basis of new fisheries international law. I take my hat off to Ambassador Stevenson and Ambassador McKernan, who are negotiators of high-caliber and purpose, and say that if a species approach can prevail, they can do it.