

We have already stated that we see no reason to reverse this trend and we therefore hope that the measurement of the territorial sea will be fixed by agreement at 3 nautical miles. That would be the result of the motion which we have presented for your consideration.

Article 3 is the one article which the International Law Commission did not attempt to draft in a form which could become effective by the approval of this conference. If there is to be a measurement of the territorial sea there must be a substantive motion indicating what the measurement will be. We have placed our proposal in this regard before you in the hope that it will receive the support of a sufficient majority of delegates if and only if changes are also made at the same time in Article 66. We present our proposal in regard to Articles 3 and 66 as part of one motion, because we believe that this is the only way decisions necessary in relation to these two articles can be made satisfactorily. I shall try to explain why we think the two are inseparable.

When the International Law Commission decided that there should be a contiguous zone, it said in the draft article that "it is a zone contiguous to the territorial sea". It also said that the contiguous zone may not extend beyond 12 miles. Obviously it must have been the opinion of the International Law Commission that the territorial sea would be less than 12 miles, or the word "contiguous" would have had no meaning. If one was to be the same as the other, then the zone created by Article 66 simply could not be contiguous to anything. It must have been intended, therefore, that it would be less. We are therefore confronted with the question, "How much less is it to be?". The answer to that question for many states will depend on whether control of the fishing rights is to be exercised only within the territorial sea or to the full width of the contiguous zone. An examination of the reasons given by different states for extending their territorial seas by unilateral action within recent years shows that their action has been related almost entirely to the demand for a wider area of control over the living resources of the sea. It does not seem that in any case there was a suggestion that all the rights which can be exercised within the territorial sea were needed or desired, but rather that it was the means by which they could increase the area of control over fishing in the absence of any other recognized method by which that could be done. The ILC draft does not present such an alternative. Our proposal does offer that alternative.

If the contiguous zone gives the same right of control over fishing within the whole of that zone, and I emphasize only over fishing, then it would seem that there is reason to believe that states which are in fact only concerned with the need for a larger fishing zone would in fact be ready, and perhaps anxious, to agree upon a measurement of 3 miles for the territorial sea. But unless they know whether control of fishing is to be exercised within such a wider contiguous zone, and how wide that zone is going to be, then many of them would naturally be unwilling first to make a decision in regard to the width of the territorial sea.