

*Canadian Government Comments on Breadth of the Territorial Sea*

2. In respect of the breadth of the territorial sea the Government's comments to the Secretary-General were that the 3-mile limit is no longer adequate for all purposes and in particular it is not adequate for the protection and control of fisheries. It was suggested that one solution to this problem would be to extend the territorial limit to 12 miles. An alternative which would safeguard the present position with regard to sea and air navigation would be to retain the old 3-mile limit and grant to coastal States the exclusive control over fisheries in the 12-mile contiguous zone which is already widely accepted for the purpose of exercising customs, fiscal and sanitary jurisdiction.

3. These Canadian proposals are motivated in part by the desire to see adopted some rule of general application. The present state of international law, in so far as the breadth of the territorial sea is concerned, is chaotic, there being, in the word of the International Law Commission of the General Assembly, no uniform practice as regards the delimitation of the territorial sea. At the same time the Commission has said that international law does not recognize a limit greater than 12 miles. In fact, apart from the extreme practice of Chile, Peru and Ecuador who claim jurisdiction out to 200 miles from their shores, the widest limit claimed seems to be 12 miles. The proposals also have significance in a purely Canadian context. Off the coast of Nova Scotia, large Canadian draggers have been prohibited from a zone within 12 miles of the coast in the interests of smaller Canadian fishing vessels. In recent years foreign draggers, particularly American draggers, have been fishing within this 12-mile limit. This has naturally caused a good deal of ill-feeling. If there were international agreement on a 12-mile limit for the territorial sea or a 12-mile contiguous zone in which the coastal State could exercise exclusive control over fisheries, foreign fishermen could be excluded from the coast of Nova Scotia, although it would still be necessary to recognize US and French rights guaranteed by treaties, whereby they may fish up to the shore on the west coast of Newfoundland and Labrador. The alternative proposal to retain the 3-mile limit for navigation but to support the adoption of a rule which would see coastal States having exclusive fishery rights within the 12-mile contiguous zone arose from our desire to accommodate as far as possible the US and UK view that a universal 12-mile territorial water limit would have very serious security implications.

*Canadian Government Comments on High Seas Fisheries*

4. Regarding high seas fisheries the Canadian Government's comments to the Secretary-General have under-written support of the so-called abstention principle. Under this principle, where the maximum sustainable yield of a particular high seas fishery is being maintained only as a result of research, regulation of their own fishermen and other activities of one or more States, third States which have not participated within recent times in the fishing would abstain from the fishery. This principle was incorporated in the North Pacific Fisheries Convention between the United States, Japan and Canada — Japan being the major abstainer. The principle is not widely supported since it is principally applicable only to the unique case of fisheries in the North Pacific developed by Canada and the United States. Another aspect of high seas fishing, which was not actually mentioned in our comments but which is important to States like Canada having fisheries off their shores, relates to the International Law Commission's recognition that the coastal State has a special interest in the maintenance of the productivity of the living resources in any area of high seas adjacent to its territorial sea, and that States have the right in certain instances to adopt unilateral measures of conservation on the high seas adjacent to their coast, subject to compulsory arbitration.