



STATEMENTS AND SPEECHES

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CANADIAN STATEMENT AT CONFERENCE OF
THE LAW OF THE SEA

By George A. Drew, P.C., Q.C., Chairman of the Canadian Delegation to the International Conference of the Law of the Sea, on April 18, 1958 at Geneva, Switzerland.

Mr. Chairman and distinguished delegates, these past few days have seen sudden and profound changes in the questions which must be answered if we are to reach agreement in regard to the measurement of the territorial sea and the subjects directly related to them.

First, however, may I say how deeply moved I was by the words of the distinguished delegates from India and Mexico. I shall speak later of the proposal in which we joined, but, without regard to the content or the purpose of that proposal, may I say how much I do agree to the desirability here and elsewhere of reaching a wide basis of agreement, this not only in the drafting of conventions but in the affairs of our lives and in increasing understanding within the sphere of the mutual problems that in some measure we all share. I shall not forget the words that were used here in regard to the way in which we have been associated on this occasion expressing by that very association even for so brief a time in a formal way a broad measure of association. This suggests the wide possibilities of increasing human understanding as a result of meetings of this kind.

When the distinguished delegate of the United States presented a new proposal on behalf of his country three days ago and declared their support for what is clearly a 6-mile territorial sea, then I think it is not going too far to say the ancient doctrine of the 3-mile limit no longer was left with a feather to fly with. From the moment the new proposal of the United States was placed before this committee, we were firmly convinced and still are that neither that proposal nor any other proposal then before the committee offered the possibility of general agreement in regard to the articles now under-discussion. Time was running short. Voting was due to

commence shortly on these articles. One of the major problems to be overcome in reaching agreement upon the measurement of the territorial sea was presented by the fact that several countries had fixed their territorial sea at more than 6 miles a very long time ago. As an example, Mexico had fixed its territorial sea at 9 miles 110 years ago. That measurement has assumed for the people of Mexico deep historic significance throughout the intervening years for reasons which I need not now discuss. In varying degrees, similar considerations affected the small but important group of nations which had also fixed the limit of their territorial sea at more than 6 miles. This problem was mentioned in the speech of the distinguished delegate of the United States. No solution however was offered which could have been readily acceptable to those nations.

In an earnest effort to find that broad common ground of agreement which will be necessary to obtain the support of this committee and the conference as a whole for any proposal, India and Mexico joined Canada in presenting a revision of our original proposal which could have recognized the reality of some existing territorial seas wider than 6 miles and at the same time would have frozen the position of all other countries so that until there could be a general revision of the regime of law upon which we hope we may agree, no nation which had not already done so would go beyond 6 miles and no matter what measurement they had adopted none would seek recognition of more than 12. We sought to find a solution which would recognize that reality without departing from the principle which we had supported of reaching general agreement upon a limit of the territorial sea which would be satisfactory for all purposes. There was no suggestion on our part of any support for an elastic rule under which states would in the future be entitled to adopt any width they might happen to choose for their own territorial sea. I have already explained why I think this could only lead to chaos. There are many obvious reasons why there should be as great uniformity as possible if complete uniformity cannot be attained for the purpose of removing any uncertainty as to routes over which aircraft may fly and generally in relation to the freedom of the seas. I have discussed this subject in some detail on other occasions and I am sure I need not repeat the arguments I made on an earlier occasion for a recognition of the importance to everyone of us of freedom of the air. Whatever nation operates the airlines, the service given in this way is of equal value to all. The size of this is in itself a demonstration of what this new form of transportation means in terms of international contact. Try for a moment to visualize what the probabilities would be of bringing these delegations together and the answer is given of the importance of this new service to all of us. The growth of this new service is best exemplified by the fact that this year for the first time more passengers will be carried across the Atlantic by air than by ship and yet we still only are in the early stages of this great transportation development.

If we nations can attain what we desire by an extension of a fishing zone to 12 miles without limiting the area of free flight or free passage any more than is necessary, we are following the road of progress not the reverse. We indicated our support for the retention of the 3-mile limit for these and other reasons at a time when the major maritime powers still insisted that this was the only satisfactory measurement which could assure freedom of transportation, freedom of the air and freedom of the seas. Now that there are such obvious reasons for adopting the 6-mile limit, if there is to be any measure of uniformity then I do hope that all the distinguished delegates here will consider the value to all of us of retaining the positive advantages of such uniformity and the retention of as great an area of free passage as possible.

I have been struck by a suggestion made on more than one occasion that there may have been an effort by the great powers to retain certain traditions. Canada is neither an ancient nation nor by any stretch of the imagination is it a nation which conceivably could have any aggressive intentions of any kind. Practical considerations of population alone make that impossible. The proposal we have discussed is of course subject to the provision of another method by which extension of control over fishing can be achieved. We are still convinced that this was the primary purpose of almost every extension of the territorial sea. That was the only way wider control over fishing could be established. Once that factor is recognized as the reason for such an extension, then the need of a wider territorial sea disappears so long as there are clearly established exclusive fishing rights in a 12-mile fishing zone. I think if we respect the general recommendations of the International Law Commission we must start with the assumption that the 12-mile zone is the limit to which we can reasonably go.

I have not attempted to deal with the question of defence or security. I have already pointed out on an earlier occasion that I believe the width of the territorial sea now has little to do with the subject of defence. In the days of carrier task forces, long range bomber squadrons, submarines firing guided missiles and long range nuclear weapons.

Now may I return to the proposal introduced the day before yesterday. Although we had been given reason to believe that this proposal would be generally satisfactory to those nations which face this particular problem, we now find that some of those nations which would have benefitted from this proposal and others which had not previously indicated any such intention are now seeking more than they would have retained in this way. For that reason, Canada, India and Mexico no longer stand as co-sponsors of this proposal. The subject has been discussed eloquently and with warmth and understanding by the distinguished representatives of India and Mexico.

Canada now returns to its original proposal which has been commonly known as "The Canadian Proposal" since it was presented to the United Nations in 1956. It is no new concept, it is no strange concept. It has been modified only to the extent made necessary by the inescapable fact that the minimum uniform measurement of the territorial sea which is possible since the proposal of the United States was presented appears to be 6 miles.

Our new proposal is exactly the same in principle in every way as our original proposal first placed before the General Assembly then submitted to the Secretary-General of the United Nations and then presented here on March 17. We have made it clear that our main concern is to establish a 12-mile fishing zone for the protection of coastal fisheries. The creation of such a zone was in fact a new concept not embraced in the original recommendations of the International Law Commission. It did and does provide a method by which those nations who wish a wider zone to protect their fishing can do so without the necessity of expanding their territorial sea. It seemed obvious, when we first brought this proposal forward, from the statements which had been made both within their own countries and at the United Nations, that most states which had extended their territorial sea in recent years had done so primarily for the purpose of acquiring that wider area of control over fishing.

We recognize that unless those nations which were determined to extend the area of exclusive fishing rights knew that there was going to be such a fishing zone, they could not then agree here at this conference to a narrower territorial sea although it was only for the purpose of protecting their fisheries that they wished in the first place to extend the distance over which they had exclusive control. We confine our proposal to the measurement of a territorial sea which now seems generally acceptable to the nations operating more than 80 per cent of the world's commercial shipping tonnage, and with that the creation of a 12-mile zone in which there will be exclusive control of fishing which has been demanded now for so many years by nations whose fishing resources are being threatened by the rapid expansion in number and size of fishing vessels of an entirely new type. We do agree with the form in which the United States proposal has been presented and, although our new proposal asserts exactly the same principles as our first proposal, our new proposal is now drafted in a way which states these principles entirely within the confines of article 3.

Our proposal reads as follows:

"1. A state is entitled to fix the breadth of its territorial sea up to a limit of six nautical miles measured from the baseline which may be applicable in conformity with Articles 4 and 5.

"2. A state has a fishing zone contiguous to its territorial sea extending to a limit twelve nautical miles from the baseline from which the breadth of its territorial sea is measured in which it has the same rights in respect of fishing and the exploitation of the living resources of the sea as it has in its territorial sea."

There has been no change of front by Canada. Ever since 1911, we have claimed that there should be a fishing zone of 12 miles and since that time there has been a law in our country which has kept our own trawlers outside that zone. We have been waiting for long years patiently, perhaps too patiently, for a general solution to this problem which would protect the vital fishing interests of the long coast-lines on three oceans. We have no special interest in the measurement of the territorial sea as such, except for the reasons I have mentioned and the desirability of obtaining uniformity. Let me make that abundantly clear. We incorporated a proposal for a 3-mile limit only for the reason that we sought general agreement. We accepted the measurement upon which there had been such firm insistence by the major maritime powers. We still believe that if there is to be a workable regime of law, the measurement of the territorial sea must be that distance from the baseline which is acceptable to those nations which operate the overwhelming majority of the shipping tonnage of the world. It is consistent with that principle that we have now changed our original proposal for a 3-mile limit to a measurement of up to 6 miles, and that is the only change.

There would indeed have been a decisive change of front by Canada if we were to accept the completely new proposition put forward by the United States which would make the rights of a coastal state in the 12-mile fishing zone subject to the proviso" that such rights shall be subject to the right of the vessels of any state whose vessels have fished regularly in that portion of the zone having a continuous baseline and located in the same major body of water for the period of five years immediately preceding the signature of this convention to fish in the outer six miles of that zone under obligation to observe therein such conservation regulations as are consistent with the rules on fisheries adopted by this conference and other rules of international law". Let us see what that would mean. That reservation would completely neutralize the meaning, purpose and effect of the creation of a 12-mile fishing zone for more of the countries concerned with this extended protection for fishing interests. Until their

new proposal was distributed on April 13, which has in turn been revised in the form available to us this morning, the United States had supported our proposal, exactly the same in principle as that we now place before you. No such reservation in regard to fishing, as that I have just quoted, had been included and we made it very clear why it was not included and cannot be included. I regret very much that the United States has deemed it advisable to change their position. However, I naturally respect without any reservation the sincerity with which their changed position has been explained. It would indeed be a very sorry day for this conference, or any other conference, if disagreement in detail or in principle were to be interpreted as a challenge to the sincerity and good faith of any honourable delegate who expresses the opinions which he has been directed to express by his own government.

I do ask the distinguished delegates from every one of the 86 nations represented here, including the United States, to consider carefully what this reservation in the United States proposal does actually mean in practice. It would appear to me to mean that if any state has had a few small fishing vessels - it might perhaps be only two or three as there is nothing to indicate the number - fishing regularly within 12-mile from the baseline, that right would be extended in perpetuity in an area between the territorial sea and the outer edge of the fishing zone. It would enable a state to send any number of vessels no matter how large or what the size of their crew not only to a particular area but presumably to any area of water along the same continuous coastline. I am afraid that explicit statement in the proposal of the United States opens wide possibilities which, I hope, every distinguished delegate here will carefully consider. It would seem to be to mean for instance that if a few ships have been fishing in a particular area off the southern part of the coast of British Columbia, they will then have the right to fish between the 6- and 12-mile limit for the whole length of the coast of British Columbia. The same thing would apply along the eastern coast of Canada. That is how it would appear to me. Indeed I suggest that is what it does mean. The distinguished delegate of the United States made it clear that if the fishing vessels of a state had been fishing in the waters of another state for a period of five years, this would establish a right for that state to send any number of its nationals in any number of vessels of any size no matter what the size or character of the catch might be. Any coastal state which accepted the present United States proposal would be signing away its rights for all time to protect its own fishermen in a contiguous zone, if even a few small vessels of some other state had been fishing within their waters for the short period of five years continuously. I hope the full effect of this proposal will be recognized not only by those states with fishing areas but by all states who are seeking a basis of agreement which will be just and equitable for every nation represented here.

It should be unnecessary for me to repeat that with our long and close association it is not only natural but instinctive for us to give the utmost consideration to the legitimate needs and aspirations of our friends in the United Kingdom and the United States. The distinguished delegate from the United Kingdom has emphasized the importance of fishing to the people of the United Kingdom. In many ways and over many years, Canada has given ample proof of our desire to co-operate with the United Kingdom. We have reasons of long friendship and close association for co-operating in every reasonable way that is possible with the United States. But we also have our own interest and so has every other state. I do submit that the first interest in the fishing waters adjacent to any state should be the legitimate and reasonable interests of the people of that state itself wherever it may be in the whole world.

I do think that one of the things which has not been emphasized sufficiently is that the enormous new fishing trawlers now being built in many great shipyards of all different nations throughout the world in such very large numbers are not only a threat to the fishing interests of the people living along the fishing coasts of different states but they also make it possible for other nations which find it necessary to fish in distant waters to fish farther out from the shore than they have ever done in the past. In fact, we have one very clear example of that at present. One of the nations which has been fishing for the longest time in our eastern waters and which has equipped its fishing fleet with very modern trawlers has recently given its trawler captains instructions not to fish within 20 miles of our coast. This is for the very simple but important reason that with modern equipment they lose a great deal of valuable tackle if they fish too close to a rugged shoreline and moreover that with modern equipment they get better and bigger fish farther out. I would hope that some of the nations which are concerned for the reservation of these rights would recognize that by modernizing their fishing fleets, as I am sure they are bound to do without delay in any event, they will find the whole character of their distant fishing will change in a way which will greatly diminish, if not entirely remove, any unfavourable consequences of the adoption of a 12-mile fishing zone.

The distinguished delegate from the United Kingdom has very properly pointed out the economic and historic importance of fishing to their people. For reasons which I have indicated, I trust that the greatest shipbuilding nation in the world will be able to accommodate itself to these conditions which are inevitable in any event and in that way assure themselves of even greater catches in future than ever before. Every honorable delegate here today knows that off the coasts of Canada there are great fishing areas, some of the greatest fishing areas in the world, which are in no way affected by any limitation such as we propose in regard to a 12-mile fishing zone. May I at the same time as I express this hope also emphasize the fact once again that fishing

is very important to us. In 1956, the United Kingdom caught 1 million and 50,000 tons of fish. Canada caught one million and 77,000 tons. The distinguished delegate from the United Kingdom asked why, if this was the situation, we required a 12-mile fishing zone. Our population is now 17 million, less than one-third that of the United Kingdom. I think it is a fact supported by statistics that, outside of Israel, on a percentage basis Canada is today growing in population more rapidly than any other country in the world. It is reasonable to expect that within 25 years it will be at least 40 million. Probably by the end of the century it will be 70 million. Our fishing requirements will increase proportionately. We must protect our own fisheries and our own fishermen. No matter how great our desire may be to recognize the legitimate need of other nations in every part of the world, we cannot sign away our own birthright.

May I also emphasize another interest we have in this subject. Some remarks which have been made which seem to indicate that Canada enjoys a unique and remarkably favourable position of being able to reap rich harvests from these waters and of having limitless resources for our own fishing fleets as well as fishing fleets of any size from other nations who may choose to come close to our shores. The situation is very different indeed. The survival of some of our most valuable fish has been threatened from time to time. We are spending very substantial sums of money and great effort on the most advanced plans of conservation. Throughout Canada last year we spent 25 million dollars on conservation, to say nothing of the human effort involved. Of that, 13 million dollars went into research which is of value not only to ourselves but to all other nations with which we share the knowledge that we gain in this way. We had never withheld that knowledge from any nation in the world. There are several nations represented here who are well aware of our readiness to disclose the information we possess and to develop plans for conservation elsewhere along lines which have proved so successful in our own country. I mention that only to indicate that this is not in our interest alone. I do most respectfully urge the distinguished delegates of those nations which have limited interest in fishing and those nations which have no coastal areas of their own to recognize that the preservation of the fishing population is of value to all nations and that for us the establishment of an adequate fishing zone is essential for that purpose.

May I point out that in the case of landlocked nations, we have been trying to find a solution to their sharing the common heritage of the sea. Of them and of those states with a limited interest in this subject may I request that they give the interests of coastal states their careful and sympathetic consideration.

We are very close to the possibility of general agreement on an acceptable international code of the Law of the Sea. Most of the articles recommended by the International Law Commission have already been adopted. There has been far greater achievement up to this point than is generally realized outside of this conference. The one stumbling block in the way of achieving a broad basis of agreement which would have historic significance far beyond the subject matter of this conference itself is the solution of the problems raised by the articles now under consideration. Again may I humbly urge in all earnestness that we seek agreement on terms which may be generally acceptable recognizing that no solution can be perfect at the outset in its application to every country. If we do that and at this conference establish a regime of law, then we can go forward year by year in a solution of many important details which now obstruct our path. I do wish to thank the distinguished delegates too for their patience in listening to what I have had to say. I have sought however to explain the position which has been before you for a considerable time. When we are so near the possibility of success, I am confident that agreement can still be reached. That is the high purpose, that is the great challenge which now faces every one of us.

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