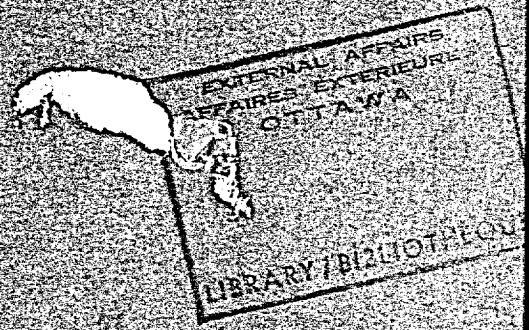
THE LAW OF THE SEA



A Canadian Proposal

THE LAW OF THE SEA

The Canadian Position on the Breadth of the Territorial Sea and Fishing Limits

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1962

54501-2—1

FOREWORD

The Second United Nations Conference on the Law of the Sea, which is to be held in Geneva next spring, provides the nations of the world with a second chance—possibly the last for some years to come—to reach agreement on the breadth of the territorial sea and on fishing limits. The impressive achievements of the First Conference give encouragement for the prospect of reaching a solution of the two remaining areas of disagreement. The goal of a complete code of international maritime law is so close at hand that the nations which will participate at the next Conference cannot afford to let the opportunity pass. It is hoped that this pamphlet, which discusses the problems involved and a Canadian proposal for a solution to them, will be of some assistance in the preparatory work for this meeting.

Secretary of State
for External Affairs

Ottawa, December 1959

THE LAW OF THE SEA
A CANADIAN PROPOSAL

"In putting forward the Canadian proposal, we do so with no claim that we have discovered any magic formula, but only in the hope that it may offer the possibility of agreement between the widely differing points of view which have already been expressed."[1]

The Second United Nations Conference on the Law of the Sea, to be held in Geneva in March or April 1960, will provide a challenge to the nations of the world to crown the achievements of the First Conference by gaining a complete and viable code of international maritime law.

Achievements of First Conference on the Law of the Sea

The First Conference, held in Geneva in the spring of 1958, achieved a remarkable degree of success and, except for the measurement of the territorial sea and the measurement of a fishing zone, which was a new legal concept advanced for the first time at that Conference, the 113 articles which it approved embraced the whole field of the law of the sea, including that relating to the territorial sea, whatever its measurement might be. By a considerable margin the largest legal conference ever convened, it was also one of the most remarkable, adopting within the space of nine weeks five instruments dealing with nearly the entire scope of the law of the sea.

A Convention on the Territorial Sea and the Contiguous Zone codifies the rights and obligations of states in their territorial sea. It contains many articles of benefit to coastal states, such as those providing for a twelve-mile contiguous zone for customs, fiscal, sanitary and immigration purposes, for a twenty-four-mile

[1] The Honourable George Drew, P.C., Q.C., Chairman of the Canadian Delegation, Geneva, March 31, 1958.

54501-2—2

closing line for bays, and for the application of the straight base-line system for determining, in certain circumstances, the starting point for measuring the territorial sea. In addition, it recognizes and regulates the right of innocent passage for ships through the territorial sea.

The Convention on the High Seas, proclaiming as its underlying principle the freedom of the high seas, gathers together into a single instrument a wide variety of rules relating to the high seas, including such matters as the nationality of ships, safety of life at sea and the prevention of water pollution.

A third Convention, on High Seas Fishing, was designed to maintain the productivity of the living resources of the high seas. It takes a new step forward in developing and applying the principles of conservation to the high seas and in recognizing the special interests of coastal states in the fishing resources in the high seas adjacent to their coasts.

The Convention on the Continental Shelf is of special importance since it is the first international instrument dealing with this subject. It grants to coastal states sovereign rights over the exploration and exploitation of the natural resources of the sea bed and subsoil of its coast to a depth of two hundred metres or to a greater depth if exploitation is possible.

Lastly, an optional protocol provides for the compulsory judicial settlement of disputes.

These achievements illustrate the immense scope of the work of the Conference.

Failure of the Conference to Agree on the Extent of the Territorial Sea or Fishing Zones

These instruments may not have achieved the recognition they deserve as important and far-reaching steps forward in maritime law, because attention has largely been focused on the failure to agree at Geneva on the questions of the breadth of the territorial sea and a coastal state's rights in the contiguous fishing zone.

The work of the Geneva Conference will, in fact, remain an incomplete edifice until it is supplemented and completed by clear and unequivocal rules on these matters. However, the failure to reach agreement on the questions of territorial sea and fishing limits was not looked upon as final; and, before the Conference adjourned, a resolution was adopted calling on the General Assembly of the United Nations at its next session to study the advisability of convening another conference to deal with the questions left unsettled by the 1958 Conference. This request was acted upon by the General Assembly at its thirteenth session in 1958; by an almost unanimous resolution the Assembly asked the Secretary-General to convoke a Second Conference in March or April 1960 "for the purpose of considering further the questions of the breadth of the territorial sea and fishery limits". In the preamble to the resolution, the General Assembly recognized that agreement on these questions would be likely to "contribute substantially to the lessening of international tensions and to the preservation of world order and peace". The Second Conference will thus have an agenda limited to two items: territorial sea limits and fishing zones.

Territorial Sea and Coastal State Jurisdiction Before the First Conference

In the nineteenth century the three-mile limit for the breadth of the territorial sea was accepted by many but not all members of the international community of nations. In the course of the present century, and particularly after the failure of the Hague Codification Conference in 1930, a large and growing number of states have come to believe that the three-mile territorial limit was not adequate and have either extended their territorial seas beyond the three-mile limit, or have claimed jurisdiction over certain areas of the high seas for particular purposes. More than twenty nations have claimed jurisdiction over customs enforcement

outside their territorial waters. A number of states have also claimed a contiguous zone for fiscal or sanitary purposes. In addition, over two dozen countries and territories have made claims to exercise limited jurisdiction over the continental shelf adjacent to their territories. Obviously, the concept that a state's jurisdiction should end at three miles has been steadily losing support. Even before the First Conference, it had become clear that it was no longer in accord with what many states regarded as their essential needs.

Generally, maritime states such as the United States, the United Kingdom, various Western European countries and Japan have continued to favour the three-mile limit for the territorial sea. Canada, however, and other newer nations, have considered claims to jurisdiction for certain purposes beyond three miles, not because of any wish to interfere with the freedom of the high seas but through a desire to achieve greater control over the various economic resources found in their adjacent waters. The First Geneva Conference provided ample evidence of a strong and widely-held feeling that, since the three-mile territorial limit failed to reconcile the interests of certain maritime states and the essential needs of the newer and of coastal states, it could not become a satisfactory rule of law for the international community as a whole.

Preparatory Work by the International Law Commission

The International Law Commission had reached a similar conclusion. This committee of legal experts, created by the United Nations General Assembly, conducted a study for almost ten years of virtually every aspect of the law of the sea; it presented its recommendations in a report of seventy-three articles, comprising a suggested code for almost the entire range of maritime law. While agreeing on most other points, the Commission had been unable to make a definite recommendation on the breadth of the territorial sea. It had recognized that, while international

practice was not uniform, international law did not permit an extension of the territorial sea beyond twelve miles. The Commission also admitted the basic legitimacy of claims to jurisdiction put forward by various states for customs, fiscal and sanitary purposes. It accordingly had recommended that states be allowed to establish a contiguous zone of twelve miles measured from the baselines for purposes of customs, sanitation and fiscal control. Thus it had been recognized clearly by the International Law Commission that states could possess jurisdiction over part of the high seas for particular purposes, without, however, having to extend their territorial seas.

The Two Problems at the First Conference

At the outset of the Conference a wide variety of proposals was put forward concerning the extent of a coastal state's jurisdiction with respect to fisheries and the territorial sea. By the time it ended, however, there emerged two basic methods of approach for dealing with this problem: one was to restrict the extent of the territorial seas to protect the principle of the freedom of the high seas, and to allow coastal states to have an exclusive fishing zone contiguous to their territorial sea; the other was to permit states to achieve their objectives by granting a wider territorial sea.

These two solutions were embodied in four main proposals,[1] none of which was able to muster the two-thirds majority support necessary for its adoption. The Canadian formula called for a six-mile territorial sea and an additional six-mile exclusive fishing zone. The United States proposal differed from the Canadian in that it recognized the right of states which had fished for a period of five years in the outer six-mile zone to continue to do so. An eight-power resolution would have granted each state the right to choose its own breadth of the territorial sea at any point

[1] See Annex for the text of these four proposals.

between three and twelve miles, and to have an exclusive twelve-mile fishing zone if the territorial sea had not been extended to that limit. Finally, there was a proposal of the U.S.S.R. that each state should determine "as a rule" the breadth of its territorial sea within the limits of three to twelve miles.

The Canadian Proposal

The significance of the Canadian proposal to the First Conference on the Law of the Sea was that it distinguished between the questions of fishing in coastal waters and of the breadth of the territorial sea.

This Canadian solution was first put forward at the eleventh session of the General Assembly in 1956; it was designed to make agreement possible on the problem of extending national jurisdiction over coastal areas by separating the varying interests of a state in its adjacent waters. The International Law Commission had already proposed a separation of a number of particular interests. The Canadian proposal carried forward this scheme by enabling coastal states to obtain exclusive control over fishery resources in their adjacent seas without extending or attempting to extend their territorial seas for this purpose. The Canadian solution is thus based on the premise that the rule or formula which would prove satisfactory to the international community of nations must take into account the fact that any extension of the territorial sea must be consistent with the principle of the freedom of the high seas and that the rule or formula should satisfy the growing needs of coastal states for the fishery resources in their adjacent seas by granting to them an exclusive fisheries jurisdiction of twelve miles. The Canadian proposal was therefore advanced in the belief that it was (as it is now) a genuine compromise formula for reconciling the conflicting positions of those states which desire an extension of the territorial sea to twelve miles or

more, and of those which seek to restrict any extension of a coastal state's jurisdiction over its adjacent seas. In suggesting a territorial sea of six miles, the Canadian proposal recognizes the concern of all states with the principle of the freedom of the high seas; and, by allowing a state a further six miles of exclusive fisheries jurisdiction, it grants to all coastal states the same measure of control over the economic resources of their adjacent seas as they would have under a twelve-mile territorial limit.

This proposal profoundly affected the course of the discussions when it was put forward at the 1958 Conference; in fact, it formed the principal content of several other plans at the Conference which rivalled the Canadian solution. At the 1960 Conference, it may be expected that once again there will be two fundamental approaches to the questions before the Conference: that of extending the territorial sea, and that of distinguishing between the fisheries interests of a coastal state and the territorial sea.

Second Conference on the Law of the Sea

The Second Conference is likely to be the last opportunity for many years to reach agreement on the questions of the breadth of the territorial sea and of a coastal state's fishing rights. It will thus be presented with a choice between the orderly development of international law and the chaos which could result from a failure to meet this challenge to create new principles for the law of the sea.

The Second Conference will no doubt begin its deliberations at the point where the 1958 Conference left off. It may be expected that there will be placed before the Conference, possibly at its outset, proposals on the territorial sea and on fishing limits substantially similar to those advanced during the First Conference. It may be assumed that the Conference will have before it proposals for the recognition of a three-to-twelve-mile territorial

limit; for recognition of a six-mile territorial sea and of the interests at the same time of states concerned with distant-water fishing; and for a six-mile territorial sea and a further six-mile exclusive fishing limit. There may be other formulae proposed for the solution of these two questions.

If the basic solutions advanced at the First Conference are analyzed, it will be seen that they had one fundamental point in common. The eight-power proposal for a three-to-twelve-mile territorial sea, the proposal of the Soviet Union, the United States and Canadian solutions all recognized, implicitly or explicitly, that a state may claim jurisdiction over fishing in a twelve-mile zone contiguous to its coastline. In fact, more than eighty nations voted for a twelve-mile fishing jurisdiction in one or other of the forms in which it was advanced in the various proposals put forward at the Conference.

This clearly demonstrates that, in spite of the failure of the First Conference to reach agreement on the territorial sea and on fishing limits, almost the entire international community did agree on one crucial matter: a coastal state has a right to a twelve-mile fishery jurisdiction. In view of this wide measure of agreement, there is good reason to hope that the next Conference may resolve the problems before it.

It is the Canadian view that the unqualified 'six plus six' formula will come closest to meeting the needs of all states, thus proving an acceptable compromise at the next Conference. The reasons for this may be seen from a comparison of the Canadian formula with other solutions.

The Canadian formula differs from the proposal for a three-to-twelve-mile territorial sea in that it grants to coastal states all the advantages which they would gain under a twelve-mile territorial sea without the disadvantages which would follow from extending the territorial sea to that limit. The Canadian solution differs from the United States six plus six formula put

forward at the last Conference in that it does not deal with the existence of "traditional" fishing rights in the outer six-mile zone.[1]

Disadvantages of a Twelve-Mile Territorial Sea—Effect on Security and Communications

The proposal for a three-to-twelve-mile territorial sea would recognize a twelve-mile territorial sea limit and, if approved, would likely lead to the general adoption of a twelve-mile territorial sea. The Canadian solution calls for a six-mile territorial sea, the widest possible limit compatible with the principle of the freedom of the high seas. A six-mile limit for the territorial sea would not detract from the rights of coastal states; on the contrary, combined with other rules, it would provide coastal states with greater advantages than they would obtain under a general twelve-mile territorial sea limit.

Thus, if the Canadian solution were approved by the Second Conference, all coastal states would acquire a six-mile territorial sea, and a further six-mile exclusive fishing zone. Under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone, coastal states would also obtain, in the outer six-mile zone, control for customs, fiscal, immigration and sanitary purposes. The *only* additional interest of a coastal state which a twelve-mile territorial sea might be thought to protect is that of security. There are, however, a number of reasons, particularly in the nuclear age, to suggest that the extension of the territorial sea beyond six miles does not necessarily provide increased security, but, rather, might reduce the very security which a coastal state is thus attempting to achieve. For example, an extension of a state's territorial sea to twelve miles might, if that state were neutral in time of war, be more likely to involve it in a limited conflict because of the greater difficulty in protecting its neutrality

[1] See page 17 for a discussion of the Canadian view on methods for dealing with problems arising in the outer six-mile zone.

rights in the wider territorial sea. With the territorial sea extended there would, moreover, be an additional area in which the right of innocent passage would be applicable, with the probable result of increased occasions for dispute.

It would seem that the security of a state might be better ensured by other methods under international law, rather than by the extension of territorial waters. Such measures are already provided for by the rights of self-defence, and of hot pursuit (approved in Article Twenty-Three of the Convention on the High Seas), and by laws which enable countries, in certain circumstances, to take action on the high seas to punish violations committed within their territorial seas. Naval demonstrations, moreover, can be more effectively dealt with under the United Nations Charter (Articles 2(4), 10 and others), rather than through an extension of the territorial sea.

The containment of local conflicts, the maintenance of collective security and the preservation of peace in the world through the United Nations would also be hindered by an increase in the extent of the territorial sea.

There are additional difficulties involved in extending the territorial sea beyond six miles. Unrestricted access by each country to all areas of the world by sea and air without transgressing foreign territory, neutral or not, is important for maintaining the easy flow of commerce. The flow of commerce is uninterrupted and unimpeded only because the high seas are free. An extension of the territorial sea beyond six miles would mean restricted access to hundreds of thousands of square miles of seas now available for the free use of every country in the world. It would also transfer to the territorial waters of various states twenty-two important connecting bodies of water in different parts of the world which are now high seas for the use of all countries.

The consequences might mean longer commercial runs, increased shipping costs, less revenue to the producer and higher

prices to the consumer. Further, increased shipping costs would ultimately have to be borne by the countries dependent upon seaborne commerce for their economic existence or development. It is seen, therefore, that any extension of the territorial sea beyond six miles might be exceedingly costly.

It is the duty of a coastal state to administer and patrol effectively its territorial sea. An increased territorial sea would require larger governmental expenditures not only to administer and patrol, but to increase and to maintain navigational aids.

Any extension of the territorial sea beyond six miles would also interfere with the freedom of the air, in that, by reducing the total free area of the high seas, it would also reduce the free airspace above them. Since there is no rule of law recognizing the right of innocent passage through the airspace over the territorial sea of a state, it is clear that to extend the territorial sea to twelve miles would affect many areas of importance to international air navigation. In an age of ever-growing air travel, such a reduction of free air space and the denial of free access to areas important for international air navigation should be a matter of concern to all states.

In conclusion, in the Canadian view there are no specific advantages in securing a twelve-mile territorial sea which a coastal state would not acquire through the unqualified six-plus-six formula, together with existing international laws and conventions. By claiming a twelve-mile territorial sea limit, there would, however, be clear disadvantages for all coastal states in sea and aerial navigation, affecting both the security and commercial interests of all nations.

The Fisheries Question—Methods of Dealing with Problems in the Outer Six-Mile Zone

In addition to a six-mile territorial sea-limit, the Canadian proposal provides for an exclusive twelve-mile fishing zone, measured from the same baselines as those of the territorial sea.

Conservation has, of course, done much to maintain the productivity of the living resources of the high seas, and, as it has now received full expression in the Convention on High Seas Fishing adopted by the International Conference on the Law of the Sea, it will play an increasingly important role in ensuring that the living resources of the sea will not be exploited to the detriment of the coastal states or of the world community. But the conservation principle, while recognizing the special interests of coastal states in maintaining the productivity of the living resources in their adjacent seas, does not reserve a reasonable coastal belt for the use of fishermen of the coastal states, even though many of their communities may largely depend for their livelihood on the preservation of the fishing stock in the nearby seas. It is to achieve this purpose that the Canadian proposal provides for more adequate fisheries jurisdiction extending six miles beyond the territorial sea.

While some emphasis appears to have been placed in public discussions on the differences between the United States and Canadian proposals at the First Geneva Conference, these proposals have, in reality, a great deal in common. As distinct from other proposals, both aim, in the interest of the freedom of the seas and for general reasons of peace and security, at restricting the limit of the territorial sea to a maximum of six miles. Both also accept the concept of a separate contiguous fishing zone comprising a further six miles.

The only difference between the two proposals relates to "traditional" or "historic" fishing rights. These are rights claimed in the six-to-twelve-mile zone adjacent to certain states by countries whose fishermen have in the past carried on and who continue to carry on distant-water fishing operations in that zone.

The newer nations of the world do not and, in the nature of things, cannot possess "traditional" fishing rights in distant waters; nor do they very often possess as yet well-developed fisheries in

their own off-shore areas. It is, however, quite natural that these states, bearing in mind the need of their expanding populations and their future requirements, should be looking to the living resources in the waters adjacent to their coasts as the source of an important and sometimes vital food supply. The Canadian proposal acknowledges the right of coastal states to achieve greater economic security and stability for their own people.

Unlike the United States proposal advanced at the 1958 Conference, the Canadian six-plus-six formula does not attempt to deal with the question of "traditional" fishing rights. In providing for an exclusive twelve-mile fishing zone, the Canadian solution contains, instead, an easily applied and uncomplicated formula capable of universal and uniform application. The Canadian formula does not attempt to deal with these questions because of the fact that fishing practices of states vary from area to area. Thus, the adoption of a new rule of international law, such as that envisaged in the Canadian proposal, may be expected to have implications for certain countries which it would not have for others. Consequently, the question of the recognition of "traditional" fishing rights or that of making allowances or adjustments for fishing operations now being carried on in the six-to-twelve-mile zone can more appropriately be dealt with through supplementary bilateral or multilateral agreements, rather than by attempts to mould the universal rule of law in such a way as to regulate or dispose of questions which are essentially particular and local in nature.

The desirability of dealing with these types of questions or difficulties on a bilateral or multilateral basis was clearly stated by Sir Pierson Dixon at the United Nations General Assembly when he pointed out that:

> "We have repeatedly said that these are matters to be settled by negotiation and by the conclusion of agreements

such as those we have reached, for instance, with the Soviet Government and with the Danish Government in respect of the Faroes."[1]

Another reason suggests that the question of "traditional" or "historical" fishing rights can more appropriately be dealt with by bilateral or multilateral supplementary agreements rather than by the rule of law itself. The concept of "traditional" fishing rights is uncertain and controversial; it has not been recognized by any rule of international law, or adjudicated upon by any international judicial tribunal. It may be relevant to mention that in allowing the straight baseline system to be used, in certain circumstances, as a basis for measuring the breadth of the territorial sea and in allowing a twenty-four-mile limit for the closing of bays, the First Geneva Conference did not make provision for traditional fishing claims which may be affected in these waters.

If "traditional" fishing rights are, however, claimed by one state and denied by another, it would seem that the most satisfactory way to deal with the dispute is not through attempting to formulate the rule of law in such a way as to recognize the claim, regardless of the particular historical, geographic, economic or other local circumstances which might be involved, but through bilateral negotiations carried out by the states concerned. The substance of such supplementary agreements or understandings may, of course, differ according to circumstances, for they are primarily a matter for the parties concerned. In the event that agreement cannot be reached, then the parties to the dispute are obliged to settle the question by pacific means such as conciliation and arbitration, in accordance with obligations contained in the United Nations Charter.

To adopt this approach to the question of "traditional" fishing rights has the important additional advantage of flexibility.

[1] 821st Plenary Meeting, Fourteenth Session, October 5, 1959.

Agreements between two states or groups of states can be modified or revised in such a way as to meet new needs and circumstances and to take account of developments affecting the precise interests which are the subject of the agreement. On the other hand, once a rule of law is established, it is likely to acquire a permanence and universality which may be undesirable in an area where change is constant and where particular conditions and circumstances may be swiftly altered by technological developments.

The fundamental problem, of course, consists in formulating a new rule of international law which will meet the interests and aspirations of the international community as a whole. In the absence of such a generally acceptable and accepted rule of law, an increasing number of coastal states may well reach the conclusion that they have no choice but to try to bring about by unilateral action the kind of rule which will enable them to achieve what they consider to be their legitimate objectives. Developments since the 1958 Conference have already given some indication of the future problems which would be likely to arise if no agreement is reached at the next Conference on precise fishing limits. While the adoption of a new rule of international law, such as that envisaged in the Canadian proposal, may adversely affect a few countries at first, it seems clear that in the long run the order and the certainty which will ensue will be of great advantage to all states. Any short-run disadvantages that might result for certain states will be substantially less serious than those which may be expected to follow from the failure of the Conference.

The Prospects for the 1960 Conference

It can be seen that the problems facing the Second Conference are indeed of concern to all States. In seeking to formulate new rules of international law to govern the breadth of the territorial sea and the fishing jurisdiction of coastal states, the Conference

will be undertaking a task of critical importance both for the development of international law and for the maintenance of peace among nations.

Rules of law on the breadth of the territorial sea and of fishing limits will complete the code of maritime law adopted at the First Conference. These new rules must take into consideration the political and economic realities of our time. If the new Conference does not give birth to such rules, the international community may have to face the existence of chaotic conditions where states decide what laws their interests require without regard to the interests of other states and the need for an international régime of law. The present situation will tend to worsen with the passage of time and may create sources of increasing international friction, and a real impediment to friendly and peaceful relations between states. It is therefore important that all nations attending the Second Conference on the Law of the Sea do their utmost to ensure that the Conference succeeds in agreeing upon uniform principles of law to take their place in the international code of law of the sea.

The inability of the First Conference on the Law of the Sea to reach agreement on a rule of international law to govern the breadth of the territorial sea and the fishing jurisdiction of coastal states should not occasion pessimism for the success of the forthcoming Conference. We all know that, in addition to its other impressive achievements, reassuring progress, even on these two matters, was made at the earlier meeting. The Conference demonstrated clearly that the area of disagreement was not large; it was almost unanimous in the view that the extent of a coastal state's fishing jurisdiction should extend to, but should not exceed, twelve miles; in addition, there was a widespread conviction that the principle of the freedom of the high seas must be maintained.

The Second Geneva Conference will thus meet with several advantages: the principal areas of disagreement have been defined; states have now had a fair period of time in which to study the

lessons of the First Conference and to consider how best to resolve the remaining differences. In addition, it seems likely that international developments in the period of time between the two Conferences have brought about an increasingly wide appreciation of the various elements of the problem and of the requirements of a satisfactory solution.

When the possibilities for the success of the next Conference are examined, the unqualified six plus six proposal emerges, in our view, as the most hopeful. By recognizing in one formula the interests of all coastal states in the freedom of the high seas and in the resources of their adjacent waters, the Canadian solution embraces the basic areas of agreement reached at the First Conference; and since this formula reconciles the position of states seeking to secure an extension of the territorial sea and that of states seeking to restrict coastal jurisdiction, it provides, we believe, a common ground upon which nations with hitherto opposing views can unite in agreeing upon an equitable and effective solution to the problems facing the Conference.

ANNEX

The Canadian Proposal:

"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."

The United States Proposal:

"1. The maximum breadth of the territorial sea of any State shall be six miles.

"2. The coastal State shall in a zone having a maximum breadth of twelve miles, measured from the applicable baseline, determined as provided in these rules, have the same rights in respect of fishing and the exploitation of the living resources of the sea as it has in its territorial sea; provided 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 portion of the 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.

"3. Any dispute with respect to the interpretation or application of this article shall, at the request of any party to the dispute, be submitted to arbitration unless the parties agree to another method of peaceful solution.

"4. For the purpose of this convention the term 'mile' means a nautical mile (which is 1,852 metres), reckoned at sixty to one degree of latitude.

"5. As respects the parties thereto, the provisions of paragraph 2 of this article shall be subject to such bilateral or multilateral arrangements, if any, as may exist or be entered into."

NOTE: It is proposed that this article be entered into with the express understanding that each party to the convention undertakes to consider sympathetically the request of another party to consult on the question of whether the rights granted by the article are being exercised in such manner as to work an inequity upon one or more of the other parties and, if so, what measures should and can be taken to remedy the situation.

The U.S.S.R. Proposal:

"Each State shall determine the breadth of its territorial waters in accordance with established practice within the limits, as a rule, of three to twelve miles, having regard to historical and geographical conditions, economic interests, the interests of the security of the coastal State and the interests of international navigation."

The Eight-Power (Burma, Colombia, Indonesia, Mexico, Morocco, Saudi Arabia, United Arab Republic and Venezuela) Proposal:

"1. Every State is entitled to fix the breadth of its territorial sea up to a limit of twelve nautical miles measured from the baseline which may be applicable in conformity with articles 4 and 5.

"2. Where the breadth of its territorial sea is less than twelve nautical miles measured as above, 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."