

POLICY BRIEF

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1958 UN Conference on Law of the Sea: Six Decades of the Legal Order for Seas and Oceans

Dr. Monika Chansoria

The Geneva Conference of 1958 was convened in the advantageously constructive backdrop of six sessions of exhaustive work undertaken earlier by the International Law Commission. The Commission on the Law of the Sea submitted its final report to the UN General Assembly in 1956 covering all provisions of the law of the sea that were systematically ordered and submitted as one body of draft articles. This final report is regarded as the primary foundation for discussions at the United Nations Conferences on the Law of the Sea that were held in Geneva in 1958 and subsequently in 1960.¹ The convening of the Conference had its precedents in the work of The Hague Conference for the Codification of International Law held in 1930 under the auspices of the League of Nations.² During The Hague conference, the question of the proper breadth of the territorial sea was debated so vigorously, and with so little concurrence of opinion, that no single resolution proposing an appropriate breadth was even put to a vote.³

The meetings in Geneva heightened the need for a new and generally acceptable Convention on the Law of the Sea as a legal order for the seas and oceans that would help in facilitating international communication on the subject. It would simultaneously establish the basis for various aspects of development and codification of the law of the sea. The UN Conference on the Law of the Sea met at Geneva from 24 February to 27 April 1958 with participation from 86 States, of whom, 79 were UN member states, and seven were members of specialized agencies not of the United

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1 1958 Geneva Conference on the Law of the Sea, April 29, 1958, Archival Library of International Law, Office of Legal Affairs, United Nations.

2 International Law Commission Report, UN General Assembly, 11th Session, Official Records, Supp. No. 9 (A/3159).

3 Jesse S. Reeves, "The Codification of the Law of Territorial Waters" 24 A.J.I.L. 1930.

Nations though.⁴ This was a follow through of the International Law Commission report during its eighth session (A/CN 4/104), and the General Assembly adopting resolution 1105 (XI) of 21 February 1957 – by means of which it was decided to convene the United Nations Conference on the Law of the Sea in Geneva in 1958.

The UN Conference on the Law of the Sea opened four conventions (each of which constitutes a general code of law) and an optional protocol for signature, namely:

- Convention on the Territorial Sea and the Contiguous Zone (CTS, entered into force on 10 September 1964)
- Convention on the High Seas (CHS, entered into force on 30 September 1962)
- Convention on Fishing and Conservation of the Living Resources of the High Seas (CFCLR, entered into force on 20 March 1966)
- Convention on the Continental Shelf (CCS, entered into force on 10 June 1964)
- Optional Protocol of Signature Concerning the Compulsory Settlement of Disputes (OPSD, entered into force on 30 September 1962)

The 1958 Conference undertook the task to “examine the law of the sea, taking account not only of the legal but also of the technical, biological, economic and political aspects of the problem and to embody the results of its work in one or more international conventions or such other instruments as it may deem appropriate”.⁵ According to Tullio Treves, Judge

of the International Tribunal for the Law of the Sea, the adoption of four conventions and a protocol in lieu of one single all-encompassing convention was conceived as a means to attract the acceptance by a broad number of States of at least some of the Conventions.⁶ The mandate of the 1958 UN Conference was to examine the law of the sea, taking account not only of the legal but also the technical, biological, economic and political aspects of the problem, and to embody the results of its work in one or more conventions or other appropriate instruments. In addition to the aforementioned conventions, the Conference also adopted a series of resolutions⁷, prominently including:

- Nuclear tests on the high seas
- Pollution of the high seas by radio-active materials
- Régime of historic waters
- Tribute to the International Law Commission

Convention on the Territorial Sea and the Contiguous Zone

The International Law Commission during the fourth session in 1952, decided to use the term “territorial sea” in lieu of “territorial waters”. Through detailed provisions, the CTS set out the main rules on the territorial sea and contiguous zone. Its rules address, in particular, baselines, bays, and delimitation between States whose coasts are adjacent or face each other, innocent passage and the contiguous zone.⁸ The importance of the Geneva Conventions is customarily historical, and is widely referred to as an expression of the “traditional law of the

4 For more details see, Summaries of the Work of the International Law Commission, United Nations Office of Legal Affairs.

5 Tullio Treves, “1958 Geneva Conventions on the Law of the Sea” United Nations Audiovisual Library of International Law, 2008.

6 Ibid.

7 United Nations Conference on the Law of the Sea, UN Codification Division Publications, 24 February – 27 April 1958, Geneva.

8 Ibid.

sea”.

Notably, these Conventions were adopted less than a decade earlier from when a defining speech at the UN General Assembly triggered the process for the complete renewal of the law of the sea. Ambassador Arvid Pardo is regarded as the ‘Father of the Law of the Sea Conference’ owing to his involvement and contribution to modern law of the sea and was the Permanent Representative of Malta to the UN. Pardo delivered a prophetic speech at the UN General Assembly in November 1967, which went on to becoming his legacy wherein he called for the protection of the oceans from arbitrary appropriation and made the pitch for a regime to efficiently administer their resources. The United Nations Convention on the Law of the Sea (UNCLOS) universally adopted in 1982 – often described as the “Constitution for the Oceans” is by far the most far-reaching treaty ever negotiated under UN auspices that has been fostering the maintenance of peace and security ever since.

Many provisions of the Geneva Convention, at the time of their adoption, corresponded to customary international law. Moreover, a number of provisions in the CTS are set out in the 1982 Convention and can be seen as corresponding to customary law. For an instance, under article 311, paragraph 1 of the UNCLOS, the Convention “shall prevail, as between States Parties, over the Geneva Conventions on the Law of the Sea of 29 April 1958”. Pardo underscored customary international law, which always accepted that the sovereignty of a coastal state over its territorial waters extended also to the airspace above

and to the seabed and its subsoil thereunder. This concept was reaffirmed in Article 2 of the 1958 Geneva Convention on the Territorial Sea and Contiguous Zone. Pardo insisted upon the vitality of seabed and ocean floor resources, while simultaneously highlighting the strategic importance of the seabed and ocean floor for military and/or economic purposes.⁹

The legal obstacles that confronted the 1958 Conference majorly revolved around determining the legal limit of the territorial sea appertaining to a coastal state, and the Conference at that point, was unable to resolve this inordinately difficult and controversial question. The United States, Great Britain, Japan, Holland, Belgium, Greece, France, West Germany, and other maritime nations, adopted as its first goal in the Conference, the preservation of the traditional limit of the territorial sea at three miles except as modified by reasonably greater historical limits. This was done since that limit was long recognized in international law.¹⁰ The territorial sea is the belt of water running along the coast over which the coastal state exercises sovereignty, subject to certain limitations imposed by international law. Any extension of the width of the nation’s territorial sea or of its internal waters cuts down the freedom of all other nations to sail on, fly over, or lay cables in, what was formerly the high seas.¹¹ There is no right for aircraft to overfly another nation’s territorial sea except under a treaty, with its consent, or pursuant to the Chicago Civil Aviation Convention of 1944¹² as to the contracting parties.

The International Law Commission had drafted in its final report, the following

9 Address by Ambassador Arvid Pardo cited in *Proceedings of the American Society of International Law at Its Annual Meeting* (1921-1969) vol. 62, April 1968, pp. 216-229.

10 Arthur H. Dean, “The Geneva Conference on the Law of the Sea: What was Accomplished” *The American Journal of International Law*, vol. 52, no. 4, October, 1958, pp. 607-628.

11 Article 2, Convention on the High Seas (UN Doc A/Conf. 13/L.53).

12 Convention on International Civil Aviation (Dec. 7, 1944) in force April 4, 1947, T.I.A.S., No. 1591.

provision, as Article 3:¹³

- 1) The Commission recognizes that international practice is not uniform as regards the delimitation of the territorial sea.
- 2) The Commission considers that international law does not permit an extension of the territorial sea beyond twelve miles.
- 3) The Commission, without taking any decision as to the breadth of the territorial sea up to that limit, notes, on the one hand that many states have fixed a breadth greater than three miles and, on the other hand, that many states do not recognize such a breadth when that of their own territorial sea is less.
- 4) The Commission considers that the breadth of the territorial sea should be fixed by an international conference.

The Commission adopted no provision, which would alter the historically traditional rule that the maximum breadth of the territorial sea is three miles. It did not, however, approve the twelve-mile limit; rather it left the question to the 1958 Conference. It was against this background that the Conference attempted to do what the Commission could not do.¹⁴ One of the most complex and controversial problems which the Conference faced was the claim of many nations that the baseline from which the territorial sea is measured need not be the actual coastline of the state involved but may, under certain circumstances, be a system of straight lines drawn from points on or near the shore over portions of water to other points on, or near, the shore.¹⁵ The law governing the establishment of such baselines was set forth by the International Court of Justice in the well-known *Fisheries Case*.

The Convention on the Territorial Sea (CTS) adopted at the Conference contains the following crucial provision as Article 16(4) that stipulates:

There shall be no suspension of the innocent passage of foreign ships through straits, which are used for international navigation between one part of the high seas and another part of the high seas or the territorial sea of a foreign State.

While outlining the *Limits of The Territorial Sea*, the 1982 UNCLOS stated the following:

- Article 3 on the Breadth of the Territorial Sea: Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention.
- Article 4 on the Outer Limit of the Territorial Sea: The outer limit of the territorial sea is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea.
- Article 5 on the Normal Baseline: Except where otherwise provided in this Convention, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State.

The 1958 Conference on the Law of the Sea in Geneva shall perennially be reminisced as the first universal conference on the subject held since 1930. Post 1958, the world was undergoing major political transformations including colonial rule that was rapidly coming to an end and ushering in new nation-states in the world order. The traditional ‘three-mile’ territorial

13 International Law Commission Report, UN General Assembly, 11th Session, 51 A.J.I.L., 1957, p. 161.

14 International Law Commission, Rapporteur’s speech, 485th meeting of the Sixth Committee of the General Assembly, November 28, 1956, (UN Doc. A/Conf. 13/19) 1956.

15 Dean, n. 10.

sea limit began its journey towards becoming obsolete. Today, when the United Nations is exploring novel ways to find an integrated approach to manage oceans via established and accepted rule of law and regimes, the history and role of the 1958 UN Conference on the Law of the Sea surrounding territorial waters and maritime territories shall remain a key and primary source referral point in tracing the oceans' legal journey from the historical past to the contemporary present and future.