

Many a Slip

The 1960 UN Conference on the Law of the Sea failed to reach agreement on the breadth of the territorial sea and fishing limits, with India, Chile and Ecuador playing decisive roles

The road to the 1982 United Nations Convention on the Law of the Sea (UNCLOS) was littered with failed treaty-making conferences. In 1930, a League of Nations conference broke up without a decision over territorial waters. In 1958, a UN conference failed to agree on the breadth of the territorial sea and associated fishing limits. In 1960, a follow-up UN conference to decide these two outstanding questions collapsed.

At the 1960 conference, a joint United States-Canada plan emerged as the front-runner, calling for a universal six-nautical-mile territorial sea plus a non-exclusive six-mile fishing zone, with a 10-year phase-out of 'historic fishing rights' for states fishing in other state's waters over the previous five years. This plan, backed by the maritime powers—who sought to maximize their own naval, merchant and fishing fleets' global reach by minimizing others' claims to territorial seas and fishing zones—also won the support of the West European nations, the former British dominions, and moderates elsewhere. But could it gain the required two-thirds of the vote?

At the time, Asia-Pacific states played a pivotal role in the coastal states' campaign for greater control over their coastal waters. Many from the region questioned the universalist claims made on behalf of the law of the sea and found them to be wanting. Indeed, Indian ministers challenged the idea that the law of the sea was international law at all.

In the run-up to the conference, Defence Minister Krishna Menon noted that the maritime powers' claims to 'historic fishing rights' in other states' coastal waters simply perpetuated the exploitative practices of colonialism. And Law Minister, Ashoke Sen, and

others observed that the powers habitually treated the high seas as private property, closing off swathes of ocean when it suited them. They cited the example of the Americans declaring danger zones in the Pacific for the Bikini Atoll nuclear tests and the Eastern Mediterranean during the Syria-Turkey crisis.

At the conference, the Asia-Pacific states pursued a dual strategy when agitating for greater control over their own coastal waters. The Indian delegation argued that coastal states should be empowered to control the movement of foreign warships through the territorial sea and the contiguous zone, while delegations from the Pacific-seaboard Latin American states pressed for recognition of exclusive fishing zones and preferential fishing

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rights in the high seas. Together, these campaigns offered a compelling alternative to the minimal package offered by the US-Canada plan.

Territorial sea

Ashoke Sen, leading the Indian delegation, pushed Western delegations to accept an amendment that required the authorization of warships in the territorial sea and contiguous zone. He stressed that he was under strict instructions from Prime Minister Jawaharlal Nehru to extract concessions on this issue. The Western delegates cobbled together a counter-proposal offering prior notification,

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but not prior authorization, of warships. Nehru's Cabinet turned this down. The Americans were concerned by this, and one State Department official, speaking to the Canadian ambassador in Washington, wondered whether it might be necessary to bring 'strong pressure' to bear on India. (The Canadian responded that 'strong-arm tactics' would likely stiffen the Indian resolve.)

Meanwhile, a different kind of pressure was applied, with President Dwight Eisenhower and two prime ministers, John Diefenbaker and Harold Macmillan, sending personal messages to Nehru to persuade him to drop the idea of authorization and support the US-Canada plan. Macmillan informed him that India's attitude would be "highly important for the success or failure of the Conference", and that its breakdown would prompt unilateral action that "could give rise to dangerous friction". Yet he offered nothing more than that

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which had already been rejected by India—namely, prior notification but not prior authorization. A few days later, Nehru sent an equally unyielding reply back to Macmillan: "As you know, there is conflict of opinion between some of the great maritime powers and the smaller countries who, from past experience, are rather apprehensive of any interference with their freedom and independence. In regard to one matter particularly there has been strong feeling among those countries which, I feel, is justified. This is in regard to foreign warships coming within coastal waters without prior authorization. We have given a great deal of thought to this matter and we feel that the proper course would be for such authority or permission to be obtained from the coast State. Even normal courtesy would demand this."

The plan's sponsors had played their final card and had been unceremoniously rebuked. There was no middle ground on authorization of the passage of warships: if the West did not give way, the Indian delegation would vote against the US-Canada plan. This threatened to damage the prospects of the conference reaching a decision.

Fishing rights

While India was holding out against the West over warships, other states were chipping away at the 'historic fishing rights' component of the US-Canada plan. For many delegates, the unregulated presence of other states' long-distance fishing fleets in their offshore waters was unacceptable. While Iceland's clashes with British trawlers under Royal Navy protection dominated the headlines in the Northern hemisphere, the Asia-Pacific states pushed back too. In the mid-1950s, for example, the Peruvians impounded Onassis fleet whalers and US tuna clippers operating within 200 miles of their coastline. And the South Koreans arrested, and occasionally destroyed, Japanese trawlers and trollers that ventured across the 190-mile 'Rhee Line'.

As the conference progressed, the opposition to the US-Canada plan gathered pace, prompting the plan's sponsors to offer sweeteners to coastal states concerned about foreign fishing. The US and Canadian delegations drafted an amendment to their own plan—submitted by Brazil, Cuba and Uruguay—offering states limited preferential fishing rights in the high seas, subject to compulsory dispute settlement. And the US delegation leader, Arthur Dean, offered some South and Central American states one-on-one deals that would cancel American claims to historic fishing rights in their coastal waters in exchange for votes supporting—or at least abstaining on—the US-Canada plan. After fixing these deals, Dean expected Ecuador and El Salvador to abstain, and Argentina, Guatemala and Chile to vote for the plan. This would have been just enough to secure the two-thirds majority required for treaty

signature. But there's many a slip 'twixt the cup and the lip – and slip things did.

In the final hours before the voting in plenary was due to take place, the Chilean and Ecuadoran governments instructed their delegates to vote against the US-Canada plan. Then there was another twist. The Brazil-Cuba-Uruguay amendment sailed through the plenary with a comfortable two-thirds majority, but opposition to it had been brewing in Japan, home to one of the world's largest long-distance fishing fleets, on grounds of both preferential fishing rights and compulsory dispute settlement. As a consequence, Tokyo instructed its delegation to abstain rather than vote for the US-Canada plan if amended by the Brazil-Cuba-Uruguay proposal.

In the event, the US-Canada plan secured 54 votes for, 28 against, with five abstentions; Lebanon was absent from the chamber. It, therefore failed by a single vote to win a two-thirds majority, and the conference collapsed.

In the following days, the Western delegation leaders cabled their capitals, laying most of the blame for the outcome on three states: India, Chile and Ecuador. The New Zealand delegation leader Robert Quentin-Baxter summed up the factors that had led to the breakdown. India, he wrote, was the biggest contributor because its opposition to the US-Canada plan “gave heart” to those campaigning for wider territorial seas, encouraging some to shift their positions, and emboldening others to hold out for better deals.

And the Americans' concessions had not prevented Chile's move from support to opposition, or Ecuador from pressing “new private demands against United States to which latter could not agree”, prompting its switch from abstention to opposition. Meanwhile, Japan, reacting against the offer of preferential fishing rights, shifted from support to abstention. All told, these developments were enough to deny the maritime powers their treaty.

Confidence crisis

The Western states saw the failure of the 1960 conference as a significant problem. Indeed, it triggered a crisis of confidence in the practice of treaty-

making itself. If they were unable to command sufficient votes for their positions on the law of the sea, how could they ensure that their interests were represented in other general multilateral treaties? At the next UN

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conference on the law of the sea of 1973-82, they therefore attempted to reassert their control over the process by persuading the conference to move away from voting, and towards agreement by consensus and an all-in package deal. ¶

For more



https://legal.un.org/diplomaticconferences/1960_los/
United Nations Conference on the Law of the Sea, 1960

https://legal.un.org/diplomaticconferences/1973_los/
Third United Nations Conference on the Law of the Sea (1973–1982)

<http://www.fao.org/3/s5280T/s5280t00.htm#Contents>

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