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25th February, 1958

CABINET

TERRITORIAL WATERS

Memorandum by the Secretary of State for
Foreign Affairs

On 18th February the Attorney-General was invited to report further to the Cabinet about the possible compromises on the limits of territorial waters (C.C.(58) 17th Conclusions, Minute 5). I attach a copy of a report sent by the Attorney-General from Geneva.

2. I invite the attention of my colleagues to the Attorney-General's statement that a decision is necessary soon.

S. L.

Foreign Office, S. W. 1.

25th February, 1958

TERRITORIAL WATERS

Foreign Secretary from the Attorney-General

I think you may like to have a report of today's events.

2. Soon after my arrival this morning the Americans came to see me, and I had a long talk with them and Professor Bailey of Australia. The American delegation is led by Dean, a member of Dulles' law firm. I met him in Dallas when I was a guest of the American Bar Association and also in London this year, and this may prove useful but Saunders of the State Department is obviously the real power in their team.

3. They propose to put up a big fight for the retention of the three-mile limit and to secure that they are prepared if necessary to agree to exclusive fishing rights up to twelve miles. Their fishing interests would be injured to some extent but they are prepared to pay this price. They say they are completely opposed to any extension of the three-mile limit; that extension to six miles would close the Aegian Sea and large areas of the Pacific; that in wartime the six miles of territorial sea of a neutral might prove most embarrassing. They want, if possible, the fisheries question to be considered along with, if not before the breadth of the territorial waters. I feel that it is most desirable that the latter question should be postponed, and I would like to see if a satisfactory solution of the conservation of fisheries problem could be secured first. If it could, this might reduce the pressure for exclusive fishing up to twelve miles and also the pressure for extending territorial waters. The difficulty is that the Commission's report on conservation is not satisfactory to us as it would enable a coastal State to impose restrictions which would be in force until an arbitrary tribunal had decided to the contrary. We are trying to work out an alternative procedure whereby a coastal State can in case of urgency on an ex parte application get consent of a tribunal to the immediate imposition of restrictions. Even if we succeed in this it will be less satisfactory to the coastal States than the Commission's report, and while a solution of the conservation problem might satisfy some it is not thought by Saunders or by Bailey that it would satisfy the majority of those wanting exclusive fishery rights.

4. The Americans feel as we do that there is a very real risk that the conference will reject the three-mile limit and either accept twelve miles or accept what I hear India is likely to propose, that individual States can select the limit they like up to twelve miles. This to my mind is just the twelve-mile limit dressed up to look more attractive.

5. The Americans also recognise that there is a real risk that the conference may agree to exclusive fishing for twelve miles, and at the same time not agree to the retention of the three-mile limit. I stressed the danger that separation of fishing rights from territorial waters might make it easy subsequently to extend the exclusive fishing rights, and also that with fishing rights added to contiguous zone rights it might pave the way to treating the twelve miles in a few years' time as territorial. They felt they could resist the latter if they could get the conference to affirm the three-mile principle, but from what I have heard today it seems to me most unlikely that the conference will agree to it.

6. If we support the Americans in paying the price of exclusive fishing rights to twelve miles in order to retain the three-mile limit the chances of its acceptance would I expect be improved. If we, when it is clear that the three-mile limit by itself will not be accepted and clear that we cannot block its rejection, on our own account propose six miles then, without American support, the likelihood of twelve miles being accepted is increased.

7. I am inclined to the view that we should not agree to any exclusive fishing rights outside territorial waters. If we do not agree, despite what other nations agree as to that, we can at least challenge any claim to such rights before the International Court.

8. I think it is necessary that the Cabinet should decide soon whether we should go in with the Americans and agree to twelve miles exclusive fishing if the three-mile limit is retained, or decide to try to get the six-mile territorial waters limit with no further fishing rights. A decision is required pretty soon as lobbying for either proposal is required. So far we have not given any indication of the course we would follow if, as is likely, the conference rejects the three-mile limit by itself. The discussions with the Americans have been on possible fall-back positions. I told them that we were completely with them on the retention of the three-mile limit, and that I hoped we should be able to agree on what position to take up if it was clear that that would not be accepted.

9. Bailey (Australia) was with us in seeking to retain a three-mile limit, pessimistic as to the outcome of the conference, and my impression was that he was inclined to think that exclusive fishing rights up to twelve miles was the best chance of avoiding a twelve-mile limit to territorial waters. Australia is against an extension to six miles on account of the narrow straits north-east of Australia. My feeling is that it is worthwhile putting pressure on our friends to get some agreement to six miles if that really would be less disadvantageous to us than the exclusive fishing rights. I think the Americans might change their position if they could be convinced that the strategic considerations against the adoption of a six-mile limit were not overwhelming. The Australians might also change their view if they were able to secure satisfactory rights of passage through the straits.

10. The conference started this afternoon with the usual preliminaries. Drewe (Canada) is coming to see me later tonight and the Poles and Israel particularly want to see us. I will send you a daily report of this character if you would like - not so long as this I hope. I am hopeful that debate on the territorial waters breadth can be postponed for a bit but delegations are taking up their positions now, and so a decision as to the fall-back line is rather imperative. I should like to remain here to see how things go but if required I could, of course, return and discuss this with you and come back here again.

11. Fitzmaurice (Foreign Office Legal Adviser) has seen this and agrees with it.

Geneva

24th February, 1958