United Nations
GENERAL ASSEMBLY
THIRTEENTH SESSION
Official Records

SIXTH COMMITTEE 588th MEETING

Tuesday, 25 November 1958, at 10.50 a.m.

NEW YORK

CONTENTS

Chairman: Mr. Jorge CASTAÑEDA (Mexico).

AGENDA ITEM 59

Question of convening a second United Nations conference on the law of the sea (A/3831, A/C.6/L.435, A/C.6/L.438, A/C.6/L.440) (continued)

GENERAL DEBATE (continued)

1. Mr. JOHNSON (Liberia) said that his delegation shared the view that the delimitation of the territorial sea was an international question which could never depend on the will of coastal States alone. It was also true, however, that the act of delimitation might be carried out unilaterally by a coastal State, and that it would continue to be valid so long as it was consistent with the principles of international law. He agreed with those outstanding international jurists who upheld the principle that maritime occupation in particular, as in the case of fisheries, must be effective in order to be valid, but that even in the event of disuse such occupation continued to be valid provided the area in question came within the three-mile limit, since the authority of a State within its own territorial sea of three miles was absolute and exclusive. Liberia had always observed the three-mile limit and would continue to do so until the situation was changed by an international convention.

2. He emphasized that any change with regard to the breadth of the territorial sea should be made by multilateral conventions rather than unilateral action. In that respect, the example of the United Nations Conference on the Law of the Sea, held at Geneva in 1958, which had led to the signing of four conventions, was most encouraging; his delegation, therefore, felt no hesitation in co-sponsoring the joint draft resolution (A/C.6/L.435), which requested the Secretary-General to convoke a second international conference of plenipotentiaries on the law of the sea for the purpose of considering further the questions of the breadth of the territorial sea and fishery limits. He noted that some representatives would have preferred that the conference be held at an earlier date, but his delegation was fully in favour of holding it in July or August 1959. With respect to the place, he would be guided by the majority opinion, although for reasons of economy he would prefer New York.

3. Mr. SASTROAMIDJOJO (Indonesia) said that his delegation was prepared to lend its whole-hearted support to the effort to find an equitable solution to the controversial question of the delimitation of the breadth of the territorial sea and the contiguous zone. It hoped, however, that special consideration would be given to the problems arising from Indonesia's unique geographic, economic and historic position.

4. Indonesia, an archipelago of over 3,000 islands with tens of thousands of miles of coastline located between the Indian and Pacific Oceans and two continents, Asia and Australia, was confronted by substantial difficulties in attempting to define the baseline from which the breadth of its territorial sea and contiguous fishery zone should be measured. As the Indonesian representative at the Geneva Conference had pointed out,1/ not much attention had been paid in the past to the unique problem presented by archipelagos. The practice hitherto adopted by some States with regard to the regime of the territorial sea around an archipelago varied greatly, while the traditional method of measuring the territorial sea from the low watermark created a number of complex problems, since it was based on the assumption that the coastal State possessed a land territory forming part of a continent. The application of that method to archipelagos would inevitably be prejudicial to the States concerned; an archipelago, which was essentially a body of water within whose limits a great number of islands were located, had to be regarded as a single unit, with the water surrounding and between the islands forming an integral whole with the land mass.

5. Geographically, economically and historically the thousands of islands which comprised the Republic of Indonesia formed one single unit and one archipelago. Many of them were very small, with a land mass no larger than two or three square miles. To treat each one of those as a separate entity with its own territorial waters would create many serious difficulties, since the archipelago as a whole constituted the integral territory of a sovereign State. Apart from the difficulties of exercising State jurisdiction in each island, the treatment of each island as a separate unity would also have a bearing on the maintenance of communications between them. Because of the interdependence of the islands, the maintenance of communications was vital to the country's integrity as well as to its economic life. Safeguarding those communications was essential for the very existence of the Indonesian State, and, in the event of war, even if Indonesia itself were not a belligerent, freedom of communication would be seriously threatened. Furthermore, the use of modern means of destruction in war would have a disastrous effect not only on the population of the islands but also on the living resources of the waters from which millions of Indonesians still earned their livelihood. For that reason, his Government was convinced that the only just approach was

1/ United Nations Conference on the Law of the Sea, Official records, Volume III: First Committee (United Nations publication, Sales No.: 58.V.4, Vol.III), 7th meeting, para. 5.

to treat the Indonesian archipelago as a single and integral unit, inclusive of the water surrounding the islands and between them and the land mass, and to measure the country's territorial sea from baselines drawn between the outermost points of the outlying islands of the archipelago.

6. He emphasized that although his Government had established a twelve-mile limit for its territorial sea, that in no way signified non-recognition of the principle of freedom of the seas. On the contrary, his Government expressly guaranteed freedom of navigation to every country, provided that that did not endanger Indonesia's own security or national interest. A country such as Indonesia, which was composed of islands in the middle of two oceans and which relied on shipping for its existence, could not fail to be a champion of the principle of the "mare liberum" which had been proclaimed by Grotius more than three hundred years ago. The establishment by his Government, and by many others as well, of the twelve-mile rule was only the inevitable consequence of the growing need for security and of dependence on the resources of the sea for food and livelihood. As had been stated by his delegation at the Geneva Conference,2/ the claims of nations to broader territorial seas, whatever form they might take, should be considered as an attempt to correct a situation felt to be indefensible, namely, that resulting from the application of the principle of the freedom of the seas in a manner which did not take into sufficient consideration the needs and interests of coastal States. Such an attempt constituted a constructive step to bring the rules of international law into accord with the needs and desires of the community of nations.

7. In the age of inter-continental ballistic missiles and nuclear weapons, the three-mile rule, which had been based on the range of shore batteries in the eighteenth century, was probably obsolete. Moreover, as Professor Sörensen, head of the Danish delegation at the Geneva Conference, had recently pointed out,3/ that rule had never been universally accepted, and when the Geneva Conference opened in February 1958 it had appeared that hardly more than twenty out of some seventy-three coastal States adhered to it. Nevertheless, certain powerful maritime Powers still contended that, under existing international law, the three-mile rule was the only rightful delimitation for the breadth of the territorial sea of any nation, and they thereby limited the exclusive fishing rights of a coastal State to that small area. In his opinion, that conception was not very democratic, since in true democracy there should be no difference between the strong and the weak or between the rich and the poor.

8. While not ignoring all the difficulties which must be overcome to reach a suitable agreement on the delicate issues left unsettled by the Geneva Conference, his delegation strongly believed that further deliberation on those matters would have a reasonable chance of success if States approached the task in a spirit of co-operation and compromise, and if sufficient time were given for the necessary preparations.

9. Mr. TOLENTINO (Philippines) said that from time immemorial fishing had been one of the major sources of food supply for the people of his country. In recent years, the Philippines had been devoting an increasing effort to fishing, including deep sea fishing in the high seas, in order to feed its fast increasing population. For a long time, however, the greater portion of the Philippines catch of fish would have to come from the waters within the national boundaries.

10. As an archipelago vulnerable to invasion by sea, the Philippines was also concerned about its security.

11. For those reasons, the Philippines had always shown a great interest in the law of the sea and had been one of the co-sponsors of General Assembly resolution 1105 (XI) convening the Geneva Conference.

12. Considering the scope of the work, the Geneva Conference had been a remarkable success. In a spirit of compromise and co-operation, it had been able to adopt a number of instruments which were great strides in the progressive development and codification of the law of the sea. Unfortunately, the vital and controversial question of the breadth of the territorial sea, together with a number of other matters, had been left unsettled.

13. It was possible that, if the Conference had continued longer, some agreement might have been reached on those matters. It was doubtful, however, whether the Conference could have extended its life motu proprio and it had therefore referred the matter back by the resolution of 27 April 1958 which requested the General Assembly to consider calling a second conference.4/ The very approval of that resolution, however, was an expression of the feeling that such a conference could reach agreement on the unsettled questions.

14. The Philippines delegation supported the view that another conference on the law of the sea should be called. Unless the question of the breadth of the territorial sea were settled as soon as possible, incidents such as that which had occurred between Iceland and the United Kingdom could be repeated in other parts of the world. An early solution of the question would accordingly help to maintain international peace.

15. There was no rule of international law fixing the breadth of the territorial sea. The Philippines delegation could not agree with the argument that because the Geneva Conference had failed to fix a definite limit, that limit should be three miles. There was neither a general practice nor a convention fixing three miles as the breadth of the territorial sea. The International Law Commission had expressly recognized that international practice was not uniform with regard to the delimitation of the territorial sea, and at the opening of the Geneva Conference only some twenty out of over seventy maritime States still adhered to the three-mile limit.

16. The Geneva Conference had met under the shadow of the 1930 failure. Accordingly, the Conference had had hastened to approve some conventions although the most important question had not been finally solved; that had led to some juridically illogical results.

17. Among the points which his delegation considered juridically illogical was the conflict between the im-

2/ Ibid., para. 3.

3/ Max Sörensen, Law of the Sea (International Conciliation No.520, Nov. 1958; New York, Carnegie Endowment for International Peace).

4/ United Nations Conference on the Law of the Sea, Official records, Volume II: Plenary meetings (United Nations publication, Sales No.: 58.V.4, Vol.II), annexes, document A/CONF.13/L.56, resolution VIII.

plications of articles 7 and 24 of the Convention on the Territorial Sea and the Contiguous Zone.[5] Article 7, paragraph 4, by specifying that the closing line of a bay could not exceed twenty-four miles, implied that the Conference assumed the breadth of the territorial sea to be twelve miles, or at any rate more than three miles, for if it were three miles the baseline should not be more than six miles. On the other hand, article 24 of the same Convention made provision for some degree of jurisdiction by the coastal State over a contiguous zone beyond the territorial sea and, in its paragraph 2, stated that "The contiguous zone may not extend beyond twelve miles from the baseline from which the breadth of the territorial sea is measured". The necessary implication was that the territorial sea would be less than twelve miles, for, if the territorial sea were fixed at twelve miles, then the contiguous zone would disappear and all the provisions in the Convention dealing with that zone would have no reason to exist.

18. In fact, the very promulgation in that Convention of rules on the territorial sea without defining the breadth of that sea was in itself an illogical process of codification. Thus the Convention recognized the sovereignty of the coastal State over the territorial sea and provided for the right of innocent passage through that sea, but the Convention, and international law itself, did not specify the extent of sea over which that sovereignty, as a rule, and that right of innocent passage, as an exception, were to be exercised.

19. It was therefore desirable, if not actually imperative, to call another international conference to complete the work left unfinished at Geneva. The breadth of the territorial sea and the question of fishery limits were not, however, the only matters left unsettled by the Geneva Conference. Indeed, the resolution concerning the convening of a second conference referred to the breadth of the territorial sea and some other matters which were discussed in connexion with that problem.[6] A second conference should therefore not be limited to the questions of the breadth of the territorial sea and of fishery limits.

20. There were, of course, some controversial subjects which had not been definitely decided by the Geneva Conference but which had been disposed of in one way or another so that they did not have to be dealt with in a second conference. For example, the question of whether nuclear explosions constituted an infringement of the freedom of the high seas had been referred to the General Assembly for appropriate action; the question of international action regarding the disposal of radio-active waste in the sea had been referred to the International Atomic Energy Agency for further study and action; the question of historic waters was the next item to be discussed by the Sixth Committee; some matters connected with fisheries conservation had been disposed of by means of recommendations in the resolutions included in the report of the third Committee of the Geneva Conference.

21. There were, however, other questions on which no steps had been taken and which should be dealt with by any conference called upon to complete the work of the 1958 Conference. One of those questions, which was of immediate importance to the Philippines, was that of the territorial sea of archipelagos. The International Law Commission had recognized the importance of that question in paragraph 3 of the commentary to article 10 of its draft (A/3159, p. 17), but had been unable to state an opinion on it, and had expressed the hope that an international conference would give attention to it.

22. Bearing in mind that commentary, it was clear that article 10 of the Convention on the Territorial Sea and the Contiguous Zone, which was similar in substance to article 10 of the Commission's draft, and which provided that the territorial sea of an island was measured in accordance with the provisions of the articles of the Convention, was not applicable to an archipelago. Article 4 of the Convention, which permitted the use of straight baselines "if there is a fringe of islands along the coast in its immediate vicinity" was likewise inapplicable to archipelagos, because it applied only to islands along the coast or in its immediate vicinity but not mid-ocean groups of islands like the Philippines.

23. At the Geneva Conference, proposals had been submitted which would have provided special rules for groups of islands or archipelagos, but the proposals had never been thoroughly discussed and had been withdrawn without being voted upon, because the Conference did not appear to have enough time to examine them adequately. The question, therefore, still remained open. Accordingly, the provisions of the Convention on the manner of measuring the territorial sea, or any provision fixing the extent of the territorial sea which might be approved at another conference, would apply to coastal States of a continental nature, but would have no application to the Philippines and other archipelagos which needed special rules.

24. The Philippine archipelago was composed of some 7,100 islands, lying approximately 1,000 miles off the south-east of Asia. It constituted a compact group of islands which had been historically and traditionally considered as a single territorial unit; the waters around and between the various islands had been regarded for centuries as part of the national territory. The boundaries of the Philippines had been fixed by treaties such as the Treaty of Paris of 10 December 1898 and the Treaty of Washington of 7 November 1900, both between Spain and the United States, and the agreements between the United States and the United Kingdom of 2 January 1930 and 6 July 1932. Those boundaries, as laid down by treaty, had been reiterated in domestic law, even before the independence of the Philippines, over the signature of the representative of the United States sovereignty of that time. In many cases, those boundaries extended beyond twelve miles from the nearest coast, but the waters around the outer shores of the group and within the boundaries fixed by the treaties had always been regarded as territorial waters of the Philippines. From those waters generations of Filipinos had from time immemorial drawn a large part of their food supply.

25. Those circumstances of geography, history and economics showed the peculiar and exceptional position of the Philippine archipelago, which was different from that of continental States. It was different even from the position of Indonesia: the Philippines consisted of smaller, but more numerous islands, and the whole archipelago covered a smaller area of the globe. The case of the Philippines was indeed unique, and

5/ Ibid., document A/CONF.13/L.52.

6/ Ibid., document A/CONF.13/L.56, resolution VIII.

accordingly no general rule of international law could be applied to it. In the absence of any applicable rule, the treaty limits of Philippine territory must remain as the outer boundaries of the territorial waters of the country.

26. Although the Philippines believed in the legal validity of its position, his country would certainly feel more secure if that position were set forth in a convention adopted at an international conference. It therefore urged that in any further conference the archipelago question should be given due consideration.

27. With regard to the date of the conference, his delegation felt that enough time should be allowed for adequate preparation by the Secretariat and Governments. If the conference were held in summer, considerations of climate might point to Geneva; on the other hand, considerations of economy might point to New York. The Philippines delegation, however, had no particular preference; the important thing was to hold the conference to complete the codification and development of the law of the sea.

28. Mr. PHLEGER (United States of America) said that the fact that agreement had been reached at the Geneva Conference on nearly all the topics covered in the International Law Commission's draft (A/3159, para. 33) showed both the high quality of the Commission's work and the spirit of conciliation which had marked the Conference. Unfortunately, it had not been possible for the Conference to reach agreement on the breadth of the territorial sea and the closely related question of the extent to which a coastal State could control fishing in the high seas off its coasts, although a number of proposals had been put forward in an effort to reconcile the different views. There was reason to believe that if more time had been available, the Conference would have reached agreement there also. Active discussions had continued until it became necessary to end the Conference. Accordingly, on 27 April 1958, the last day of the Conference, a resolution had been adopted requesting the Assembly to consider the advisability of calling a second conference.

29. The debate in the Sixth Committee had shown a wide measure of agreement on the desirability, and indeed the necessity, of a second conference. The Committee must therefore agree on an appropriate date.

30. His delegation disagreed with the suggestion to put off the conference for two or even three years. So much time was not required to prepare for a second conference, particularly since the questions at issue had been on the agenda of the 1958 Conference and had received wide consideration at that time. In fact, there were compelling arguments in favour of an earlier date, for instance the existence of disputes in some parts of the world about the breadth of the territorial sea and particularly fishing rights in waters off the coast of other States. An early agreement on rules to solve those disputes would eliminate international tension and friction. The timely calling of a second conference on the law of the sea could thus contribute to the achievement of one of the purposes of the United Nations, namely, to adjust international differences and promote friendly relations between States.

31. There were compelling reasons for holding the conference at a relatively early date. In the six months during which the four Geneva Conventions had remained open for signature, forty-nine States had signed one or more of the Conventions and forty-four had signed the Convention on the Territorial Sea and the Contiguous Zone. In order, however, to permit the practical application of the Convention on the Territorial Sea and the Contiguous Zone, it was necessary to come to an agreement on the breadth of the territorial sea and fishing limits. It was probable that a number of States which had signed that Convention would not be prepared to ratify it without knowing the answers to those questions. It was therefore imperative that those answers should be found at an early date.

32. The United States delegation was unable to agree with the thesis that it was not practicable to fix the date of a second conference without first considering the nature and the substance of the proposals which might be made at such a conference. That would amount to prejudging the questions to be considered at the second conference, even if it were possible to advance specific proposals at present, which it was not.

33. A preparatory period before the next conference was necessary for the very purpose of developing possible solutions likely to obtain the necessary acceptance. It would therefore be an anomaly to suggest that possible solutions should first be advanced and tested in the Sixth Committee; that was precisely the purpose of a second conference.

34. The United States delegation was in favour of calling a second conference in the belief that a solution of the questions at issue would serve the cause of peace. As to the most desirable date for the conference, sufficient time for diplomatic preparation had to be allowed. Therefore, although his delegation sympathized with the delegations which had proposed February 1959, it believed that the best time would be during the summer of 1959.

35. With regard to the terms of reference of the second conference, his delegation considered that the prospects of agreement on the territorial sea and fishery limits might be prejudiced if additional topics were included. Accordingly, the phrase "the breadth of the territorial sea and fishery limits" contained in the joint draft resolution (A/C.6/L.435) adequately covered the scope of a second conference.

36. General Assembly resolution 1105 (XI), under which the first conference was called, would be a useful precedent with regard to the details in convening the new conference. No serious difficulty had been experienced at the Geneva Conference in carrying out that resolution. Moreover, since the second conference would be a direct extension of the first, it was logical that it should be convened under similar terms.

37. Mr. TABIBI (Afghanistan) said that the work done by the Sixth Committee, the International Law Commission and the Geneva Conference in the codification of international maritime law represented an important milestone on the road to the fulfilment of the purposes stated in Article 13 of the Charter. At the beginning of the Geneva Conference, the eighty-six delegations present had been haunted by the failure of The Hague Conference of 1930. They had been aware that, if the Conference were to fail, the rule of law, the legal work of the United Nations and the hope of mankind to establish universal rules of maritime law might all be dealt a fatal blow.

38. The Geneva Conference, unlike its predecessor at The Hague, had been attended by delegations of States without sea coasts, who had come to assist in the defence of the freedom of the sea, the basic principle of the law of the sea as a whole.

39. Despite the pessimistic atmosphere at the outset, the Conference, as a result of co-operation and understanding, had successfully adopted five instruments of great significance, covering the entire range of the law of the sea. And it was heartening to learn that the Convention on the High Seas had already been signed by forty-nine nations, the Convention on the Continental Shelf by forty, the Convention on the Territorial Sea and the Contiguous Zone by forty-four, and the Convention on Fishing and Conservation of the Living Resources of the High Seas by thirty-seven. Many nations, including Afghanistan, had also taken steps to have those instruments ratified as soon as possible.

40. Despite all those welcome facts, two crucial questions remained unsettled: the breadth of territorial waters and fishery rights. He had witnessed the efforts made at Geneva to solve those vital questions, and recognized that, in the absence of a solution, the very applicability of the Convention on the Territorial Sea and the Contiguous Zone was in doubt. If the Conference had had more time at its disposal, however, agreement on those questions would certainly have been reached, for the efforts made by certain countries to devise a compromise formula acceptable both to the supporters of the three-mile rule and to the advocates of the six and twelve-mile limits had begun to meet with some success. Furthermore, the very fact that eighty-six Governments—or almost the entire community of nations—had been able to agree on one hundred articles and devise five international instruments of great importance showed that no problem was insoluble. They should therefore also be able to find a common formula for the breadth of the territorial sea and the fishery zone, a formula designed to serve not the individual interests of coastal States but the entire community of nations. Such a rule would remedy the existing unsatisfactory position.

41. Afghanistan's main objective in taking part in the discussions on the law of the sea had always been, first, to contribute, as a land-locked country, to the development of the law of the sea, and, secondly, to express its readiness to offer its services in the quest for a satisfactory solution of the most difficult problems.

42. Since the Geneva Conference had recognized that land-locked countries possessed the rights of free transit, those countries—which comprised one-eighth of the community of nations—were naturally equally interested in a second conference. That interest was prompted primarily by the belief that the absence of a solution of the outstanding questions impeded the ratification of the instruments adopted. Any delay in reaching agreement on the breadth of territorial waters might put off the entry into effect of those instruments, and would therefore be a matter of equal concern to the land-locked States and to the coastal States. Moreover, international law did not recognize unilateral actions of the coastal State exclusively for its own benefit, as had been stressed by the International Court of Justice in the Fisheries Case; and the land-locked States, as co-owners of the high seas and entitled to the right of innocent passage through the territorial waters of the coastal States, would thus gladly support any effort to arrive at a multilateral solution of the issues still unsettled.

43. With regard to time and place, he said that many delegations—including those from Scandinavia—had expressed themselves in favour of a second conference early in the spring of 1959. Others, including the sponsors of the joint draft resolution, would prefer a second conference in July or August of 1959. A third group believed that the matter should be referred to the fourteenth session of the General Assembly, which would then be able to discuss the advisability of a second conference or take steps to solve the pending questions itself. Lastly, the representative of Iceland, whose nation was currently more concerned with the problem than any other, had asked (538rd meeting, para. 8) that a solution be sought at the current session.

44. The Afghan delegation believed that the nations that had participated at the Geneva Conference had not had sufficient time for diplomatic preparation for the problem to be discussed either at the current session or in the spring of 1959. His delegation would, however, support the idea of considering the matter either at the fourteenth session or, if the majority so preferred, at another conference.

45. In conclusion, he stressed that no generally acceptable solution could ever be reached without adequate advance preparation. The States which had taken part in the Geneva Conference should therefore begin immediately to prepare themselves for the next meeting. Furthermore, his delegation believed that the current session of the Assembly should set in motion some machinery which might offer its good offices to the various groups of nations holding different views on the breadth of the territorial sea and fishing rights. That function could be performed either by the Secretary-General or by a committee of nations less directly concerned in the controversy. If that suggestion should meet with sufficient response, he would gladly submit a concrete proposal, either in the form of a separate draft resolution or as an amendment to a text already before the Committee. The Geneva Conference had greatly reduced the area of possible disagreement, and a satisfactory solution of the outstanding questions could be reasonably expected.

46. Mr. RADUILSKI (Bulgaria) said that, in his delegation's view, the question before the Sixth Committee was of great significance. The Committee's decision would inevitably have important repercussions, especially on the ratification and application of the Conventions drafted at Geneva. Moreover, as the Committee's Chairman had pointed out at the 583rd meeting quite rightly, the question was not merely one of procedure or organization. Any decision to call the conference prematurely might lead to its failure, and all the relevant factors should accordingly be weighed carefully and without undue haste. Above all, the Sixth Committee should consider what would be the likelihood of a second conference solving the difficulties still unsettled.

47. The Bulgarian delegation, proceeding from the assumption that no question was insoluble provided that there was good will, believed that, at the appropriate time, the calling of a second conference would prove necessary. That attitude was in line with the resolution adopted by the Geneva Conference, which had recognized the desirability of making further efforts

at an appropriate time. The question before the Committee, however, was when would the time be appropriate or, in other words, when would it be possible to reach an agreement on the unsettled questions of international maritime law.

48. It was universally recognized that the success of the Geneva Conference had been due to the spirit of co-operation manifested by the States represented there, and to their readiness to make reasonable concessions. The Secretary-General himself had confirmed that fact in the introduction to his annual report on the work of the Organization (A/3844/Add.1, p. 3). Moreover, that spirit of co-operation had been shown by all of the States represented and not merely by some. Had it been otherwise, no agreement would have been achieved. Any suggestion, therefore, that only certain States had made concessions was untrue, and hardly conducive to the atmosphere necessary for calling a second conference.

49. The two questions left unsolved by the Geneva Conference were the breadth of the territorial sea and the related rights of the coastal State, especially in the matter of fishing. Those questions could only be settled if all concerned had the same assurances as they had had before the Geneva Conference regarding the matters successfully solved. Until that stage had been reached, the time could not be said to be appropriate for the second conference; and the failure of such a meeting could have serious adverse effects on the results already obtained. The memory of The Hague Conference should serve as a warning.

50. In considering whether the prevailing atmosphere was suitable for a second conference, States were somewhat hampered by the fact that there had not yet been sufficient consultation on the subject among them. In referring to consultation between States he meant, of course, consultation between all Governments and not merely between groups. But certain discouraging signs were already perceptible. First and foremost, certain States were again making efforts to revive the legend that the three-mile limit of territorial waters constituted a rule of international law. That position had been adopted by, among others, the representatives of the United Kingdom (584th meeting) and France (585th meeting). In reality, of course, the three-mile limit was totally rejected by existing international law and had been rejected even before the Geneva Conference. That fact had been confirmed by the International Law Commission in its commentary to article 3 of its draft (A/3159, pp. 12 and 13). The Commission had clearly stated that the view of the advocates of the three-mile rule had not been supported by the majority of the members of the Commission.

51. Despite the Commission's findings, many major maritime Powers had persistently argued at the Geneva Conference that the three-mile limit of territorial waters represented an established and valid rule of the law of nations. But the reaction to those arguments had been so strong that not a single proposal calling for confirmation of the alleged three-mile rule had been put to the vote either in the First Committee or in plenary. The main reason for that reaction had, of course, been that the majority of States had never recognized the rule. Many of the newly-independent States had expressly stated that they could not accept rules imposed by the great maritime Powers purely in the latters' own interests and in disregard of the peoples under their domination. In that connexion, he cited from the statement made in the First Committee of the Conference by the representative of Burma.[7/]

52. An examination of the records of the Conference, especially of the 56th and 57th meetings of the First Committee and of the 14th plenary meeting, showed that virtually all the proposals put to the vote had been either for an unrestricted twelve-mile belt or for a six-mile belt of territorial waters plus a six-mile fishery zone; the differences in the various proposals had merely reflected the varying conditions which determined the preferences of the sponsors. That fact showed beyond all doubt—as the Philippine representative had stated at the 54th meeting of the First Committee—that the three-mile limit had been formally interred.

53. Since the champions of the three-mile limit had all finally abandoned it at the Geneva Conference, it might be surprising that they should again be trying to assert its validity. That, however, was a purely tactical manoeuvre, designed to facilitate so-called "concessions" which would result in the reintroduction of the United States "compromise" proposal.[8/] As was already clear, such tactics could hardly contribute to the success of a second conference. The contention that the United States proposal represented a genuine concession could not be considered seriously. Nor was there much force in the argument that that proposal had received the greatest number of affirmative votes. The joint proposal of Burma, Colombia, Indonesia, Mexico, Morocco, Saudi Arabia, the United Arab Republic and Venezuela, calling for a twelve-mile limit,[9/] had received only six votes less, and the Soviet Union's proposal[10/] had also been supported by numerous delegations. In those circumstances, the purpose being to arrive objectively at a universally acceptable standard, it could not be argued that the United States proposal, which almost half of the States present had opposed, represented a serious attempt at a general rapprochement.

54. The United States proposal could not, in any circumstances, serve as a basis for a general agreement, because the formula which it envisaged was but an attempt—as the USSR representative had so rightly said—on the part of the major maritime Powers to retain their privileged position. The true meaning of the reservation contained in the United States proposal had also been excellently brought to light by the Canadian representative at the 54th meeting of the First Committee of the Conference and at the 14th plenary meeting. Another correct evaluation of that proposal could be found in the statement of the representative of Saudi Arabia, also at the 14th plenary meeting, who had emphasized that it was completely devoid of any elements of compromise or conciliation, and that its adoption would defeat the very purposes and principles of the Charter.

55. Another implication of the resurrection of the three-mile rule could be detected in the dispute between the United Kingdom and Iceland. In the absence

7/ Ibid., Volume III: First Committee (United Nations publication, Sales No.58.V.4, Vol.III), 4th meeting, paras 6 ff.

8/ Ibid., Volume II: Plenary meetings (United Nations publication, Sales No. 58.V.4, Vol.II), annexes, document A/CONF.13/L.29.

9/ Ibid., document A/CONF.13/L.34.

10/ Ibid., document A/CONF.13/L.30.

of any juridical arguments, a State had resorted to extra-juridical methods, and naval vessels had been sent to prove that Iceland had no right to extend its fishing zone to twelve miles. That action violated the Charter, which called for the peaceful settlement of international disputes, and the rules of peaceful co-existence between States. It was essentially a result of refusing to recognize the established right of the coastal State to 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 its security and the interests of international navigation.

56. The French representative had recalled (585th meeting) that the high seas were the common heritage of all, and had said that any extension of the territorial sea to the high seas constituted a territorial annexation of the latter whenever it was a result of a unilateral declaration and not of an international convention. The contention that the principle of the freedom of the high seas must be safeguarded was admittedly true, but the unsettled question was how to determine the limits of the high seas and where they should be separated from territorial waters; and since public international maritime law had rejected the three-mile rule, it could not be argued that everything outside the three-mile belt represented the high seas and that any extension of that limit constituted an unwarranted annexation. Secondly, the French representative's views were not shared by the International Law Commission, for paragraphs 2 and 3 of its commentary to article 3 of its draft (A/3159, p. 12) clearly implied than an extension of the territorial sea up to a limit of twelve miles was permissible. And thirdly, the French representative should remember that, besides the principle of the freedom of the high seas, there was also the principle of the sovereignty of the coastal State. The aim, therefore, should be to reconcile the interest of the costal State and the interest of the international community at large. The French representative's call for mutual concessions was in itself admirable, but when viewed in the context of his arguments on the freedom of the high seas it lost much of its value.

57. In conclusion, he stressed that there had not been a sufficient exchange of views between Governments generally to show whether there had been enough rapprochement to justify the calling of the second conference. Furthermore, there had been no preparatory work to give grounds for belief that a new conference would be assured of success. As a result, there was nothing to warrant the conclusion that the atmosphere had sufficiently improved, and the General Assembly would be best advised to defer consideration of the question of a second conference until the fourteenth session. That would give both Governments and the Secretary-General an opportunity to make the necessary preparations.

The meeting rose at 1 p.m.

Litho. in U. N. 77601-April 1959-2,050