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Cooperation with Inter-American Bodies - Report by the Secretary on the proceedings of the Third Meeting of the Inter-American Council of Jurists held at Mexico City, January-February 1956

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CO-OPERATION WITH INTER-AMERICAN BODIES

DOCUMENT A/CN.4/102

Report by the Secretary of the Commission on the proceedings of the Third Meeting of the Inter-American Council of Jurists

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[12 April 1956]

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Introduction

1. At its seventh session the International Law Commission unanimously adopted on 29 June 1955 a draft resolution proposed by Mr. F. V. García-Amador, one of its members, in which it decided:

“1. To request the Secretary-General to authorize the Secretary of the International Law Commission to attend, in the capacity of an observer for the Commission, the third meeting of the Inter-American Council of Jurists, to be held in Mexico City in the beginning of 1956, and to report to the Commission at its next session concerning such matters discussed by the Council as are also on the agenda of the Commission;

“2. To communicate this decision to the Inter-American Council of Jurists and to express the hope that the Council may be able, for a similar purpose, to request its Secretary to attend the next session of the Commission.”¹

2. On 5 August 1955, Dr. Yuen-li Liang, Secretary of the Commission, informed Dr. Charles G. Fenwick, Executive Secretary of the Inter-American Council of Jurists, of the Commission's decision, and requested him to communicate the terms thereof to the Inter-American Council of Jurists.

3. In a letter dated 22 November 1955, addressed to the Secretary-General of the United Nations, Mr. William Manger, Acting Secretary General of the Organization of American States, expressed the hope that the Secretary of the International Law Commission would attend the third meeting of the Inter-American Council of Jurists. In his reply, dated 20 December 1955, the Secretary-General of the United Nations said that the Secretary of the International Law Commission would be authorized to attend the meeting.

4. Accordingly, the Secretary of the Commission attended the sessions of the third meeting of the Inter-American Council of Jurists, held at Mexico City from 17 January to 4 February 1956, in the capacity of observer.

5. This report covers the proceedings of the third meeting in so far as they relate to topics which are also on the agenda of the International Law Commission, namely:

- (a) System of territorial waters and related questions; and
- (b) Reservations to multilateral treaties.

A. BRIEF HISTORY OF THE INTER-AMERICAN COUNCIL OF JURISTS

6. The Inter-American Council of Jurists was established by the Ninth International Conference of American States, held at Bogotá in the spring of 1948, to serve as an advisory body on juridical matters; to promote the development and codification of public and private international law; and to study the possibility of

attaining uniformity in the legislation of the various American countries, in so far as it might appear desirable.²

7. The Charter of the Organization of American States contains the rules governing the Inter-American Council of Jurists. Article 57 describes the Council of Jurists as an organ of the Council of the Organization. Like the other two organs of the Council (the Inter-American Economic and Social Council and the Inter-American Cultural Council), it possesses technical autonomy within the limits of the Charter, that is, in the performance of its functions under the Charter, but its decisions must not encroach upon the sphere of action of the Council of the Organization (article 58).

8. Pursuant to the general provisions of article 60 of the Charter of the Organization of American States, it is the function of the Inter-American Council of Jurists, as far as possible, to render to the Governments such technical services as the latter may request, and to advise the Council of the Organization on matters within its jurisdiction.

9. The Inter-American Council of Jurists is composed of representatives of all the Member States of the Organization (article 59). The Charter provides that the Inter-American Juridical Committee of Rio de Janeiro shall be the permanent committee of the Inter-American Council of Jurists (article 68). This Committee is composed of jurists of nine countries selected by the Inter-American Conference, the jurists in their turn being selected by the Inter-American Council of Jurists from a panel submitted by each country chosen by the Conference. The Council of the Organization is empowered to fill any vacancies that occur during the intervals between Inter-American Conferences and between meetings of the Inter-American Council of Jurists (article 69).³ Article 69 provides that the members of the Juridical Committee represent all member States of the Organization.

10. The Juridical Committee undertakes such studies and preparatory work as are assigned to it by the Inter-American Council of Jurists, the Inter-American Conference, the Meeting of Consultation of Ministers of Foreign Affairs, or the Council of the Organization. It may also undertake those studies and projects which, on its own initiative, it considers advisable (article 70).

11. Under article 71 of the Charter, the Inter-American Council of Jurists and the Juridical Committee are to seek the co-operation of national committees for the codification of international law, of institutes of international and comparative law, and of other specialized agencies. In addition, the Council of Jurists, in agreement with the Council of the Organization, is authorized to establish co-operative relations with the corresponding organs of the United Nations and with the national or international agencies that function within its sphere of action

² Article 67 of the Charter of the Organization of American States, signed at that Conference.

³ Under resolution II of the Bogotá Conference, the Juridical Committee is to “continue, as now organized, to perform its duties until such time as the provisions of the Charter of the Organization of American States pertaining thereto are carried out”.

¹ *Official Records of the General Assembly, Tenth Session, Supplement No. 9, para. 36.*

(article 61). It is the function of the Council of the Organization, with the advice of the appropriate bodies and after consultation with the Governments, to formulate the statutes of its organs in accordance with and in the execution of the provisions of the Charter. But the organs make their own regulations (article 62). The Inter-American Council of Jurists meets when convened by the Council of the Organization, at the place determined by the Council of Jurists at its previous meeting.

12. The Council has held three meetings. The first was held at Rio de Janeiro from 22 May to 15 June 1950; the second at Buenos Aires from 20 April to 9 May 1953; and the third at Mexico City, from 17 January to 4 February 1956.

B. ORGANIZATION AND AGENDA OF THE THIRD MEETING OF THE INTER-AMERICAN COUNCIL OF JURISTS

13. Twenty-one countries were represented at the meeting:⁴ Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, the Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, the United States of America, Uruguay and Venezuela.

14. The agenda of the third meeting was prepared by a committee of the Council of the Organization and approved by that Council at its meeting of 22 June 1955. The topics included in the agenda were distributed among the three committees as follows:

Committee I

Topic I (a) System of territorial waters and related questions:

Preparatory study for the Specialized Inter-American Conference provided for in resolution LXXXIV of the Caracas Conference.

Topic I (b) Reservations to multilateral treaties.

Committee II

Topic I (c) Draft uniform law on international commercial arbitration.

Topic I (d) Draft convention on Extradition

Topic I (e) International co-operation in judicial procedures.

Committee III

Topic II (a) Election of the members of the Permanent Committee.

Topic II (b) Consideration of amendments to the Statutes of the Inter-American Council of Jurists.

Topic II (c) Amendments to the Regulations of the Inter-American Juridical Committee.

⁴ Dr. Charles G. Fenwick, Director of the Department of International Law and Organizations of the Pan American Union, and Dr. Manuel S. Canyes, Chief of the Division of Legal Affairs of that Department, attended as Executive Secretary and Assistant Executive Secretary respectively of the Inter-American Council of Jurists. Dr. Mauro Bellegarde Marcondes, Secretary of the Inter-American Juridical Committee, was also present. Dr. Oscar Rabasa acted as Secretary-General and Dr. Francisco Cuevas Cancino as Committee Secretary.

Topic II (d) Determination of the matters that should be studied by the Permanent Committee during its new period of meetings:

(1) Possibility of revising resolution VII of the First Meeting of the Inter-American Council of Jurists with respect to the procedure recommended in article 3 (1).

(2) Principles of international law governing the responsibility of the State.

(3) Other matters.

Topic III. Selection of the seat of the Fourth Meeting of the Inter-American Council of Jurists.

15. The remainder of this report is an account of the proceedings of the third meeting of the Council of Jurists so far as they relate to topics which also are on the agenda of the International Law Commission of the United Nations.

CHAPTER I

Matters which were discussed at the Third Meeting of the Inter-American Council of Jurists and which are also on the agenda of the International Law Commission

16. Of the topics discussed at the meeting, two are also on the agenda of the International Law Commission. For the purposes of the Council's proceedings, these topics were referred to Committee I (Chairman: Dr. Lineu Albuquerque Mello, representative of Brazil). The Committee discussed the topics in the following order: (1) Topic I (a). System of territorial waters and related questions.⁵ (2) Topic I (b). Reservations to multilateral treaties.⁶

A. SYSTEM OF TERRITORIAL WATERS AND RELATED QUESTIONS

1. Past treatment of the subject

17. As an introduction to the discussion of the problem, a brief description of past treatment is given in the paragraphs which follow:

(a) Under resolution VII of the first meeting of the Council of Jurists, held at Rio de Janeiro, the Inter-American Juridical Committee was entrusted with the study, in conformity with the plan for the development and codification of public and private international law, of the topic "system of territorial waters and related questions".

(b) The Committee then prepared a draft convention relating to the continental shelf, entitled "Draft Convention on Territorial Waters and Related Questions".

(c) Three⁷ of the seven members of the Committee expressed dissenting opinions. The Committee submitted the draft convention, with an account of its preparation and the dissenting opinions attached, to the second

⁵ Inter-American Council of Jurists document CIJ-25 (Washington, D.C., Pan American Union).

⁶ I-ACJ document CIJ-23 (Washington, D.C., Pan American Union, 1955).

⁷ Brazil, Colombia and the United States of America.

meeting of the Council of Jurists, held at Buenos Aires in 1953.

(d) In view of certain legislation enacted and declarations made by a number of American countries asserting rights in the continental shelf of their mainland and insular territories, it was realized that much more thorough research was needed into the nature of those rights and into the question of the maximum limits of claims relating to the continental shelf and the contiguous zone, in the light of the diverse characteristics of the different regions of the continent. Accordingly, the second meeting of the Council resolved to refer the topic back to the Juridical Committee, for the continuation of its study, in conformity with the procedure outlined in the general scheme of codification.

(e) The outcome of the discussions was the Council's resolution XIX, which asked the Secretary-General of the Organization of American States to invite the Member States which had adopted, or in the future might adopt, special laws on the subject of the "system of territorial waters and related questions", to transmit the texts thereof, together with the corresponding geographical charts, to the Inter-American Juridical Committee, in order that it might make an analytical study thereof and prepare a report for the third meeting of the Council of Jurists.

(f) In view of the importance of the topic and of the interest shown by the American States, which were anxious to enact legislation on the preservation of the continent's natural resources, the Caracas Conference included the question of the continental shelf among the economic topics. The Conference reaffirmed that the American States had a vital interest in the adoption of legal, administrative and technical measures for the conservation and prudent utilization of the natural resources existing in maritime areas, and adopted resolution LXXXIV, recommending that a specialized conference should be convoked.

(g) In consequence of that resolution, the Juridical Committee decided to suspend its study of the subject. But the Council of the Organization of American States, at its meeting of 5 January 1955, resolved, in order to facilitate the work of the specialized conference, to include on the agenda of the third meeting of the Inter-American Council of Jurists the topic "system of territorial waters and related questions". At the same time, the Inter-American Juridical Committee was requested to prepare a preliminary study in the light of the terms of the Caracas resolution.

(h) The Committee considered this request at its meetings held from 29 August to 2 September 1955 and, on the latter date, adopted a resolution to the effect that the study of territorial waters and related questions would remain in suspense.

2. *The law now in effect in the countries of the Americas*

18. The law relating to the sea is embodied in a number of unilateral declarations, enactments and law-making treaties, the earliest being the Anglo-Venezuelan Treaty of 1942 and the most recent the Cuban Legislative Decree of 25 January 1955.

19. A digest, prepared by the Pan American Union, of these declarations and legislative provisions is reproduced in the *Handbook* of the Third Meeting of the Inter-American Council of Jurists.⁸

3. *General debate on the topic in Committee I*

20. The debates at the third meeting touched on the following matters relating to the territorial sea: (a) the breadth of the territorial sea; ⁹ (b) article 3 of the draft articles on the régime of the territorial sea, prepared by the International Law Commission; ¹⁰ and (c) the proclamation of the 200-mile limit.¹¹

(a) *Breadth of the territorial sea*

21. The different points of view put forward during the meeting are described in the following passages; they reflect the considerations which influenced the thinking of the American States and the debate on the subject of the territorial sea. The debate culminated in the declaration called "Principles of Mexico on the Juridical Régime of the Sea".

22. On the question of the breadth of the territorial sea, the participants were divided into three schools of thought: (i) the first took the view that the breadth should not exceed three miles; (ii) the second, while not upholding a specified breadth, expressed itself disposed to accept whatever the Council of Jurists or the specialized conference might decide; and (iii) the third argued that the breadth of the territorial sea should exceed three miles.

23. The first school of thought was represented by the United States of America,¹² whose representative said, in the general debate at the eleventh session, that the United States considered the three-mile limit for the territorial sea consistent with international law and took the view that international law did not require States to recognize a breadth beyond three nautical miles.¹³

24. The second school of thought was represented by Argentina, Brazil, Colombia, Cuba, the Dominican Republic and Venezuela. The representative of Argentina requested that the conference to be held at Ciudad Trujillo should determine the breadth of the territorial sea bearing in mind the wish of the peoples of America that it should be extended.¹⁴

25. The representative of Colombia said that the three-mile rule was not a rule of international law, and that, at most, what could properly be claimed was that the three-mile limit was universally accepted as a minimum, in the sense that no State specified a smaller extent for its territorial sea.¹⁵

⁸ I-ACJ document CIJ-24 (Washington, D.C., Pan American Union), pp. 15-29 and appendix IV.

⁹ Third Meeting of the Inter-American Council of Jurists, Committee I, seventh session, document 39; tenth session, documents 47-48 and 50-51; eleventh session, documents 49 and 30.

¹⁰ *Ibid.*, fifth sessions, document 33; eighth session, document 44.

¹¹ *Ibid.*, fifth session, document 33.

¹² *Ibid.*, eleventh session, document 30.

¹³ *Ibid.*

¹⁴ *Ibid.*, tenth session, document 53.

¹⁵ *Ibid.*, fourteenth session, document 98.

26. The representative of Venezuela said that his delegation would give serious consideration to any proposal which secured general agreement in the Council.¹⁶

27. The representative of Cuba said that the tone of the debate had been one of negative criticism, and that the critics had been concerned more with destroying a principle than with laying the foundations of a new one to take its place. He added that the three-mile rule had never prevented States from stipulating a greater breadth in case of need or for the protection of a legitimate interest.¹⁷

28. The representative of the Dominican Republic said that in his country the extent of the maritime area treated as the territorial sea was defined in Act No. 3342 of 13 July 1952, under article 1 of which the breadth of the territorial sea was three nautical miles. The Council should reach a satisfactory decision which could form a basis for the specialized conference to be held at Ciudad Trujillo, and he hoped that the conference would be able to work out the principles of a fair regional settlement of all the questions relating to the problem.¹⁸

29. The third school of thought was that of the majority of the States represented at the meeting. These took the view that the three-mile rule should be abolished, and that it should be replaced by a rule more in keeping with the aspirations of the American States. This majority group consisted of Peru, Chile, Ecuador, Costa Rica, Honduras, Mexico, El Salvador, Haiti, Uruguay, Guatemala and Panama.

30. The Mexican representative said that of the world's seventy-one coastal States only twenty recognized the three-mile rule, and two of these stipulated a contiguous zone precisely for the protection of fisheries. In other words only eighteen out of seventy-one States recognized the three-mile rule. Surely it was inadmissible that such a minority should impose its views on the majority. The three-mile rule could not be said to be a rule of international law binding on the American States.¹⁹ The representative of El Salvador said that if the participants declared, as they were qualified to do, that the three-mile rule had never been a binding rule of international law, then such a declaration, representing the consensus of opinion which had materialized at the meeting, might be referred to the conference of Ciudad Trujillo in the form of a resolution or advisory opinion.²⁰ The representative of Haiti said that for reasons of defence, coastal control and economic interest his Government had stipulated a distance of six nautical miles as the breadth of the territorial sea of Haiti.²¹

31. The representatives of Uruguay, Guatemala and Panama also agreed that the three-mile rule should be abolished.²²

32. It may be said, broadly, that the participants endorsed the thesis upheld by Dr. Alejandro Alvarez in his individual opinion in the Anglo-Norwegian fisheries case:

"Having regard to the great variety of geographical and economic conditions of States, it is not possible to lay down uniform rules, applicable to all, governing the extent of the territorial sea; ... similarly, for the great bays and straits, there can be no uniform rules" ... "Each State may therefore determine the extent of its territorial sea ... provided it does so in a reasonable manner, that it is capable of exercising supervision over the zone in question and of carrying out the duties imposed by international law, that it does not infringe rights acquired by other States, that it does no harm to general interests and does not constitute an *abus de droit*." ... "States may alter the extent of the territorial sea which they have fixed, provided that they furnish adequate grounds to justify the change."²³

(b) *Article 3 of the draft articles on the régime of the territorial sea prepared by the International Law Commission*

33. In the course of the general debate, the representatives of Ecuador, Mexico, El Salvador and Cuba spoke on article 3 of the draft articles on the régime of the territorial sea reproduced in the report of the International Law Commission covering the work of its seventh session.²⁴

34. The Mexican representative said that what had happened at the last session of the International Law Commission had been truly surprising. He analysed article 3, paragraph 1, in which the Commission recognizes that international practice is not uniform as regards the three-mile limit, and paragraph 2, in which the Commission expresses the view that international law does not justify an extension of the territorial sea beyond twelve miles. He said that both paragraphs had been proposed by Dr. Amado of Brazil and had at first been approved without paragraph 3, which had been proposed later by Professor François of the Netherlands. Paragraph 3, which says that international law does not require States to recognize a breadth beyond three miles, had been approved by 7 votes to 6. The Mexican representative drew attention to the contradiction between paragraph 3 and paragraphs 1 and 2, remarking that the situation was now more confused than ever.²⁵

35. The Cuban representative agreed that there was, indeed, a manifest inconsistency in article 3, but added that one could hardly blame the Commission which had had the question of the breadth of the territorial sea on its agenda for five years. During that time the Commission had received comments from Governments from which it had gathered that the breadths stipulated varied

¹⁶ *Ibid.*, eleventh session, document 54.

¹⁷ *Ibid.*, eighth session, document 43.

¹⁸ *Ibid.*, tenth session, document 47.

¹⁹ *Ibid.*, seventh session, document 39.

²⁰ *Ibid.*, eighth session, document 44.

²¹ *Ibid.*, tenth session, document 46.

²² *Ibid.*, tenth session, documents 48 and 50; twelfth session, document 63.

²³ *Fisheries case, Judgment of December 18th, 1951: I.C.J. Reports 1951*, p. 150 ff.

²⁴ *Official Records of the General Assembly, Tenth Session, Supplement No. 9*, chap. III.

²⁵ Third Meeting of the Inter-American Council of Jurists, Committee I, seventh session, document 39, p. 10.

from three miles at one extreme to 200 miles at the other. The Commission had accordingly taken the view that Governments ought to take the other rights conferred on coastal States into account and to consider whether the rights so conceded did not go some way towards satisfying their needs and whether any adjustment in the breadth of the territorial sea was really necessary.²⁶

36. In the course of his comments on article 3 the representative of Ecuador said that while paragraph 1 recognized that international practice was not uniform as regards the traditional limitation of the territorial sea to three miles, paragraph 2 read: "The Commission considers that international law *does not justify* an extension of the territorial sea *beyond twelve miles*". Having admitted the right of States to claim a maximum breadth of twelve miles, the Commission ought to have declared that there was a corresponding duty on the part of States to recognize claims up to that limit. That demand was perfectly proper, inasmuch as it was a maxim of the law that every right presupposed a duty to recognize the right. In defiance of that maxim, article 3, paragraph 3, stated that the Commission, "without taking any decision as to the breadth of the territorial sea within that limit, considers that international law does not *require* States to recognize a breadth *beyond three miles*".²⁷

37. The Mexican representative drew attention to the views expressed by some members of the Commission, and quoted from the comment on article 3 in the report of the International Law Commission on its seventh session:

"Some members held that as the rule fixing the breadth at three miles had been widely applied in the past and was still maintained by *important maritime States*, in the absence of any other rule of equal authority it must be regarded as recognized by international law and applicable to all States".²⁸

That comment, he said, showed how necessary it was that an international body should express a definite opinion, one way or the other, on the reality of the three-mile rule.

38. The representative of El Salvador said that if those were the considerations which guided some of the members of the International Law Commission then the implication was quite clearly that, as far as they were concerned, the law of the sea was governed not by the principle of the equality of all States but by the views and practices of the maritime States concerned. Admittedly, the phrase "important maritime States" was not synonymous with "great Powers"; nevertheless, it was inadmissible that the interests of a group of States, however important, should prevail over the interests of other members of the international community, and still less was such a contention acceptable in the American family of nations the distinctive characteristic of which was the use of democratic processes.²⁹

²⁶ *Ibid.*, eighth session, document 43.

²⁷ *Ibid.*, fifth session, document 33.

²⁸ *Official Records of the General Assembly, Tenth Session, Supplement No. 9, chap. III.*

²⁹ Third Meeting of the Inter-American Council of Jurists, Committee I, eighth session, document 44.

(c) *Motives of States in proclaiming the 200-mile limit*

39. On 18 August 1952, the Governments of Chile, Ecuador and Peru, motivated by economic considerations, signed a "Declaration on the Maritime Zone" in which they proclaimed as a principle of their international maritime policy "sole sovereignty and jurisdiction over the area of sea adjacent to the coast [of their respective countries] and extending not less than 200 nautical miles from the said coast". This declaration has come to be known as the Declaration of Santiago.³⁰ During the discussion in the Council, the representatives of these States explained the reasons underlying their declaration of sovereignty over that expanse of sea. The Peruvian representative said that the object of the Declaration of Santiago as an international instrument was defensive; there was no intention of aggression or of violating the rights of others. The origins of the Declaration could be traced back, not to the arbitrary will of the States parties to it, but to the wrongful practices carried on off the Pacific coast by fishing expeditions from distant countries.³¹

40. The representative of Chile stated categorically that in his Government's opinion the tripartite Declaration did not violate any provision of international law or any acquired rights. Nor did it affect the freedom of the seas or the freedom of fishing.³²

41. The representative of Ecuador said that it was by reason of compelling geological and biological factors affecting the life, conservation and development of the fauna and flora in the ocean and in coastal waters that the extent of the maritime zone of Chile, Ecuador and Peru had been specified as 200 miles. Questions relating to the breadth of the territorial sea ought to be judged strictly according to principles of relativity; whereas, for example, the three countries' maritime zone of 200 miles represented only approximately 3 per cent of the width of the Pacific Ocean, by contrast, the application of the classic three-mile rule at the narrowest point of the English Channel meant that the territorial waters of the coastal States, the United Kingdom and France, each

³⁰ On the same date they signed:

1. An Agreement organizing a Standing Committee of the Conference, composed of representatives of the three countries;
2. A joint declaration on fishery problems in the South Pacific; and
3. Regulations governing the form of maritime hunting in the waters of the South Pacific.

A Second Conference was held at Lima from 1 to 4 December 1954 and the following agreements were signed:

1. Agreement relating to penalties;
2. Agreement supplementary to the declaration of sovereignty over the maritime zone of 200 miles;
3. Agreement relating to measures of supervision and control in the maritime zones of the signatory countries;
4. Agreement relating to the issue of permits for the exploitation of the maritime resources of the South Pacific;
5. Agreement relating to the regular annual meeting of the Standing Committee;
6. Agreement relating to a special maritime frontier zone.

³¹ Third Meeting of the Inter-American Council of Jurists, Committee I, fifth session, document 31.

³² *Ibid.*, document 32.

accounted for approximately 20 per cent of the width of the Channel. He added that States made such proclamations because, as the guardians of the right to life and security of the peoples protected by their sovereignty, they had to safeguard the natural maritime resources necessary for the satisfaction of their vital needs.³³

42. The representative of Mexico, referring to the tripartite Declaration, said that his country naturally observed with the utmost interest any initiative having as its object the utilization of the resources of the sea off a State's coast for the direct benefit, first and foremost, of that State's population and intended to ensure that the exploitation of those resources was governed by the rules prescribed by science and economics for their conservation.³⁴

43. Two States, the United States and Cuba, opposed the extension of the maritime zone to 200 miles. The United States representative drew attention to the difference between President Truman's proclamation of 1945 on the continental shelf and the Declaration of Santiago of 1952, pointing out that in the latter the States not only proclaimed "sovereignty and jurisdiction" over the sea but proclaimed them over an area of "not less than" 200 nautical miles. Whereas the principle of the freedom of the seas had been widely recognized in international law at the time of the Declaration of Santiago, the status of the continental shelf had been undetermined.³⁵ The Cuban representative said it was the generally accepted view that the waters covering the continental shelf formed part of the high seas, though the implication was not, of course, that the coastal State was debarred from exercising certain specific powers vested in it for the protection of its interests.³⁶

4. *Consideration in Committee I of the draft proposed by the delegations of Argentina, Chile, Costa Rica, Ecuador, El Salvador, Guatemala, Mexico, Peru and Uruguay*

44. Committee I closed the general debate after twelve sessions, so that representatives could study the nine-Power draft. The text of the draft as finally approved is reproduced in annex I of this report.

45. The representative of Mexico, speaking on behalf of the sponsors, explained the scope and meaning of the principles set out in the draft. It was the result of close co-operation among the sponsors who had not only made suggestions on how the document could be improved, but had also made major concessions in token of their desire to produce an agreed, compromise text. The draft had been carefully prepared and represented a harmonious balance of frequently extreme and divergent opinions and arguments.

46. With regard to the rights of the coastal State in

the sea-bed and subsoil of its continental shelf, the Mexican representative stated that in keeping with the aspirations of the American States and with numerous precedents, the natural resources of the shelf had been taken to include not only mineral substances, hydrocarbons and petroleum, but also all the maritime fauna that lived in a constant physical and biological relationship with the shelf.

47. Part C of the draft gave expression to two distinct ideas. Firstly, it provided, in paragraph 1, that the coastal State had the right to adopt adequate unilateral measures of conservation for the protection of the resources of the sea in the proximity of their coasts beyond territorial waters. That provision gave the State the right of conservation and supervision only. That might be the general rule. The language of paragraph 1 closely followed the text of a resolution submitted at the Rome Conference and supported by almost all the Latin American countries.

48. Secondly, paragraph 2 of part C made provision for certain special cases in which the coastal States had, in addition, the right of exclusive exploitation of species closely related to the coast or the needs of the coastal population.

49. The provisions concerning straight base lines and bays represented an attempt to define and establish, for the American continent, certain new rules which the International Court of Justice in its famous decision in the Anglo-Norwegian fisheries case had declared to be in conformity with international law. The intention was to apply new principles which might help to extend the area of territorial waters subject to the coastal State.³⁷

50. In commenting on the draft, the representative of Cuba said that it was not only political in nature but also patently inconsistent in its legal implications. What, he asked, could be the value of force in law of a declaration of principles, issued by a non-political body of lawyers like the Council, that expressly stipulated that the acceptance of the principles in question would not affect the position maintained by the parties to it? The sponsors of the draft had been concerned solely and exclusively with the interests of the coastal State. The purport of the draft, he concluded, exceeded the Council's terms of reference and, moreover, the draft encroached on matters which the Conference of Caracas had referred to the specialized conference to be held at Ciudad Trujillo.³⁸

51. The representative of the United States said that the draft contained statements of a political nature and should be plainly labelled as political. Part A, paragraph 2, was clearly contrary to international law. Part C, paragraph 2, was based on economic and scientific assumptions for which no support had been offered and which could not properly be made by a group of jurists.³⁹ He read a draft summarizing what his

³³ *Ibid.*, document 33.

³⁴ *Ibid.*, seventh session, document 35.

³⁵ *Ibid.*, eleventh session, document 30/Add.1.

³⁶ *Ibid.*, eighth session, document 43.

³⁷ *Ibid.*, thirteenth session, document 74.

³⁸ *Ibid.*, document 80.

³⁹ *Ibid.*, document 76.

delegation considered the third meeting might have done on the question of the territorial sea.⁴⁰

52. The representative of Venezuela proposed the following amendments which were approved and incorporated in the draft:

"1. Insert the following preamble:

"WHEREAS:

"The topic 'System of territorial waters and related questions: preparatory study for the Specialized Inter-American Conference provided for in resolution LXXXIV of the Caracas Conference' was included by the Council of the Organization of American States on the agenda of this Third Meeting of the Inter-American Council of Jurists; and

"Its conclusions on the subject are to be transmitted to the Specialized Conference soon to be held,

"The Inter-American Council of Jurists,

"2. Delete the phrase 'shoals or banks whether drying or submerged' in part D, paragraph 2.

"3. Delete paragraph 5 in part E."

53. Certain other States⁴¹ expressed the view that the circumstances in which the draft would be put to the vote made it unlikely that any practical results would be achieved, as the Council's objectives would not be attained by majority votes in favour of declarations of the type embodied in the proposal under consideration.

54. At the fourteenth session of Committee I, the draft as a whole was approved by 15 votes to 1, with 5 abstentions.⁴²

5. *Consideration of the draft at the fourth plenary session of the Council*

55. At the fourth plenary session of the Council at which the draft was discussed the representative of El Salvador proposed certain drafting amendments; these were accepted by the sponsors and eventually approved. On being put to the vote, the draft as a whole was approved by 15 votes to 1, with 5 abstentions.⁴³

6. *Reservations and declarations*

56. The representative of Bolivia made the following declaration:

"As a country which has had no sea coast for the last seventy-seven years, in consequence of resolutions by earlier international meetings and in particular by the Tenth Inter-American Conference at Caracas,

⁴⁰ In the United States draft it was proposed that the Council should: (a) recommend the specialized conference to consider the problems of the territorial sea in the light of certain principles relating to the freedom of fishing; (b) transmit to the specialized conference the records of the Council's proceedings concerning territorial waters; (c) recommend the Pan American Union to prepare a systematic bibliography of the documents and background material relating to the problems discussed at the third meeting under the topic "territorial waters".

⁴¹ Dominican Republic, Venezuela, Colombia.

⁴² Against: United States of America. Abstentions: Dominican Republic, Cuba, Colombia, Bolivia, Nicaragua.

⁴³ Against: United States of America. Abstentions: Dominican Republic, Cuba, Bolivia, Nicaragua.

Bolivia abstains from voting on questions relating to the régime of the territorial sea until such time as some solution in keeping with the requirements of international equity and inter-American understanding and co-existence ends its position as a land-locked State."

57. The representative of the Dominican Republic explained that he had abstained because he considered that the Council had undertaken to examine questions which had been explicitly referred to the specialized conference.⁴⁴

58. The representative of Guatemala made the following declaration:

"The delegation of Guatemala requests that the following declaration should appear in the records: The delegation of Guatemala considers that part D, paragraph 2, part E concerning bays, and the régime to be applied require fuller and closer study; accordingly, this delegation abstains from approving the provisions in question and also expresses its reservations with regard to the principles, inasmuch as they cannot affect the status of the historical bay of AMATIQUÉ."

59. Although Honduras voted in favour of the draft as a whole, its delegation stressed that it "gave that approval in so far as the draft did not contain anything inconsistent with the statement made at this third meeting by the Honduran delegation on 28 January".

60. The Nicaraguan representative explained that he had voted in favour of part A, paragraph 2, on the understanding that the said paragraph did not give a State absolute latitude to extend the width of the territorial sea arbitrarily and to excess, for such an excessive use of prerogatives would constitute a wrongful act, and any other State that considered its interests prejudiced would be free to bring the case before the competent international tribunal.⁴⁵

61. Other countries⁴⁶ made declarations which, like the foregoing, were incorporated into the Final Act. The United States representative stated that, after having listened to the arguments put forward, he still opposed the proposed provisions; he made the following declaration and reservation, requesting that the text thereof should be reproduced in the Final Act:

"For the reasons stated by the United States representative during the sessions of Committee I, the United States voted against and records its opposition to the resolution on territorial waters and related questions. Among the reasons indicated were the following:

"That the Inter-American Council of Jurists has not had the benefit of the necessary preparatory studies on the part of its Permanent Committee which it has consistently recognized as indispensable to the formulation of sound conclusions on the subject;

"That at this meeting of the Council of Jurists, apart from a series of general statements by representatives

⁴⁴ The specialized conference was convoked by the Tenth Inter-American Conference held at Caracas; it met at Ciudad Trujillo, Dominican Republic, in March 1956.

⁴⁵ Nicaraguan Delegation, Third Meeting of the I-ACJ, fourteenth session of Committee I.

⁴⁶ Brazil, Colombia, Venezuela, Peru.

of various countries, there has been virtually no study, analysis or discussion of the substantive aspects of the resolution;

“That the resolution contains pronouncements based on economic and scientific assumptions for which no support has been offered and which are debatable, and which, in any event, cover matters within the competence of the specialized conference called for under resolution LXXXIV of the Tenth Inter-American Conference;

“That much of the resolution is contrary to international law;

“That the resolution is completely oblivious to the interests and rights of States other than the adjacent coastal States in the conservation and utilization of marine resources and of the recognized need for international co-operation for the effective accomplishment of that common objective; and

“That the resolution is clearly designed to serve political purposes and therefore exceeds the competence of the Council of Jurists as a technical-judicial body.

“In addition, the United States delegation wishes to record the fact that when the resolution, in the drafting of which the United States had no part, was submitted to Committee I, despite fundamental considerations raised by the United States and other delegations against the resolution, there was no discussion of those considerations at the one and only session of the Committee held to debate the document.”

7. *Proposal by Cuba and amendment proposed by El Salvador*

62. At its fourteenth session Committee I took a roll-call vote, requested by the sponsor, on the following draft proposed by Cuba:

“The Inter-American Council of Jurists transmits to specialized conference convoked under resolution LXXXIV of the Tenth Inter-American Conference, the records of its sessions, together with the conclusions approved at those sessions, to serve as preparatory work for the said specialized conference, in conformity with the terms of the said resolution LXXXIV.”

63. The proposal was adopted by the Committee by 11 votes to 9, with 1 abstention.⁴⁷ At the fourth plenary session, the representative of El Salvador proposed that the draft should be amended to read as follows:

“The Inter-American Council of Jurists recommends to the Council of the Organization of American States that it should transmit to the specialized conference provided for by resolution LXXXIV of the Tenth Inter-American Conference the Principles of Mexico City Governing the Régime of the Sea, adopted by this Council, together with the records of those sessions at which the subject was discussed during the Third Meeting.”

⁴⁷ In favour: Panama, Dominican Republic, Cuba, Paraguay, Colombia, Brazil, Venezuela, Guatemala, United States, Haiti, Nicaragua. Against: Uruguay, Honduras, Chile, Argentina, Mexico, Costa Rica, Ecuador, El Salvador, Peru.

The proposed amendment was adopted by 14 votes to 6, with 1 abstention.⁴⁸

63a. The fourth plenary meeting thereafter voted on an amendment previously submitted by the representative of the United States to the above-mentioned proposal of El Salvador whereby the following words were to be added:

“as the preparatory study called for in Topic I-a of its Agenda, ‘System of Territorial Waters and Related Questions’.”

The United States amendment was adopted by 11 votes to 7, with 3 abstentions.

63b. The full text of the resolution adopted by the fourth plenary meeting reads as follows:

“The Inter-American Council of Jurists

“Suggests to the Council of the Organization of American States that it transmit to the Specialized Conference provided for in Resolution LXXXIV of the Caracas Conference the Resolution entitled ‘Principles of Mexico on the Juridical Régime of the Seas’ approved by this Council, together with the minutes of the meetings at which this subject has been considered during the Third Meeting, as the preparatory study called for in Topic I-a of its Agenda, ‘System of Territorial Waters and Related Questions’.”

8. *Proposal by Ecuador*

64. As a tribute to the Mexican people, the representative of Ecuador proposed that the title of the declaration on the territorial sea should be “Principles of Mexico on the juridical régime of the sea”. Despite the objection that the adoption of such a title would conflict with the terms of reference laid down by the Council of American States, the proposal was adopted by 14 votes to none, with 6 abstentions.

B. RESERVATIONS TO MULTILATERAL TREATIES

65. The topic “Reservations to multilateral treaties” was also referred to Committee I. As an introduction to the proceedings at the third meeting of the Inter-American Council of Jurists relating to that topic, a brief account of past treatment of the subject is given below.

1. *Past treatment of the subject*

66. At the Sixth International Conference of American States, held at Havana in 1928, the earlier work culminated in a Convention on Treaties under which the Pan American Union was designated depositary of instruments of ratification of treaties signed by American States. Accordingly, the Governing Board of the Pan American Union appointed a Special Committee to study the procedure to be observed with regard to the deposit of ratifications. The Committee’s report, containing the provisional rules governing the procedure of deposit, was submitted and approved at the Board’s session of 4 May 1932.⁴⁹

⁴⁸ Against: Dominican Republic, Cuba, Colombia, United States, Haiti, Nicaragua. Abstention: Bolivia.

⁴⁹ See annex II.

67. The topic was considered again at the Seventh International Conference of American States, and in consequence the Governing Board, at its session of 2 May 1934, approved the so-called "five rules"⁵⁰ to which resolution XXIX of the Eighth International Conference of American States refers. This resolution, which laid down the so-called "Pan American rules", states as follows:

["The Conference decides:]

"1. With the purpose of unifying and perfecting the methods of preparation of multilateral treaties, the form of the instruments, and the adherence, accession and deposit of ratifications thereof, to approve the six rules of procedure adopted by the Governing Board of the Pan American Union in its resolution of May 4, 1932, relative to the deposit of ratifications, the five rules on the ratification of treaties or conventions approved on May 2, 1934, and the two recommendations⁵¹ of February 5, 1936, on the ratification of multilateral treaties.

"2. In the event of adherence or ratification with reservations, the adhering or ratifying State shall transmit to the Pan American Union, prior to the deposit of the respective instrument, the text of the reservation which it proposes to formulate, so that the Pan American Union may inform the signatory States thereof and ascertain whether they accept it or not. The State which proposes to adhere to or ratify the Treaty may do it or not, taking into account the observations which may be made with regard to its reservations by the signatory States.

"3. To adopt the system of depositing treaties in the Pan American Union, as provided in the project presented by the Delegation of Chile, published on page 245 of the *Diario* of the Conference.

"4. To refer for study to the Permanent Committee of Rio de Janeiro the project presented by the Delegation of Venezuela and published on page 610 of the *Diario* of the Conference."

68. The Inter-American Economic and Social Council, by its resolution of 10 April 1950, had requested that the topic be studied by the Inter-American Juridical Committee. That Council resolved:

"1. To request the Council of the Organization of the American States to submit to the Inter-American Juridical Committee for study, in accordance with article 70 of the Charter of the Organization, the

⁵⁰ See annex III.

⁵¹ The first of the two recommendations of 5 February 1936, on the ratification of multilateral treaties requests the Pan American Union to continue the publication of the charts on the status of Inter-American treaties and conventions and authorizes the Director-General, when sending this record to the Governments, to inquire regarding the status of the agreements and the progress that is being made toward their ratification.

The second of these recommendations refers to resolution LVI of the Seventh International Conference of American States, which proposes the designation in each country of a representative *ad honorem* of the Pan American Union whose duty would be to expedite the study, approval and ratification of Inter-American treaties and conventions.

question as to the juridical scope of reservations to international multilateral pacts; and

"2. To send to the Inter-American Juridical Committee, as working documents for their information, the memorandum presented by the Delegation of Brazil, dated March 22, 1950, and also the existing antecedents relative thereto."

69. Acting on that request, the Council of the Organization of American States resolved, at its meeting of 17 May 1950:

"To entrust to the Inter-American Juridical Committee the immediate study of the legal effect of reservations made to multilateral pacts at any stage, whether at the time of signature, of ratification or adherence. The Juridical Committee shall communicate the results of such study to the Council of the Organization.

"2. To send to the Inter-American Juridical Committee, as informative working documents, the memorandum of March 22, 1950, presented by the Delegation of Brazil on the subject, as well as pertinent existing background material."

70. The Juridical Committee prepared a *Report on the Juridical Effect of Reservations to Multilateral Treaties*⁵² which briefly sketches the past treatment of the subject and adds some remarks that served as a basis for the discussions at the meeting at Mexico City.

2. Consideration of the topic by the Third Meeting of the Inter-American Council of Jurists

(a) Preliminary debate in Committee I

71. The representatives of Brazil, Colombia and Nicaragua each presented working documents containing fundamental points for discussion. At the proposal of the representative of Panama, Committee I decided to form a Working Group composed of the representatives of Colombia, Brazil and Nicaragua to work out an agreed draft dealing with the legal effects of reservations to multilateral treaties.⁵³

72. For their part, the representatives of Honduras, Chile, Venezuela, the United States and Mexico presented a draft resolution to the effect that the Inter-American Juridical Committee should continue the study of the legal effects of reservations to multilateral treaties, in the light of the drafts submitted and the other material produced.⁵⁴

73. Speaking on a point of order, the Argentine delegation said that the five-Power draft should not be discussed at that stage; the Committee should first discuss the fundamental points presented by the Working Group. The Argentine motion to that effect was adopted by 19 votes to 1. As a consequence, the five-Power draft was not put to the vote and the Committee decided that it

⁵² I-ACJ document CIJ-23 (Washington, D.C., Pan American Union, 1955).

⁵³ Third Meeting of the Inter-American Council of Jurists, Committee I, records of second session held on 29 January 1956, document 20.

⁵⁴ *Ibid.*, fourth session, document 24.

should first discuss and vote on the fundamental points presented by the Working Group.

(b) *Fundamental points presented by the Working Group (Colombia, Brazil and Nicaragua) for consideration by Committee I*

74. The text of the working document containing the fundamental points follows:

"A. RESERVATIONS MADE AT THE TIME OF SIGNING

"1. A State that desires to make reservations to a multilateral treaty at the time of collective signature shall communicate the text thereof to all States that are going to sign it, such communication to be at least forty-eight hours in advance unless some other period has been agreed upon in the course of the negotiations.

"2. The States receiving the communication referred to in the foregoing paragraph shall, at least twenty-four hours before the collective signing, inform the other States and the State making the reservations whether they accept the said reservations.

"3. Reservations that have been expressly considered unacceptable, even though only in part, by the majority of the States present at the signing, shall not be admitted, and if they are made they shall be of no effect whatever.

"4. When reservations are admitted, a State that has considered them unacceptable may declare at the time of signing that such reservations shall not enter into force between it and the State making them.

"5. A State that has been unable to present its reservations before the deadline agreed upon, for consideration by the other States, may do so up to the time of the collective signing, but in this case the rules will apply that are applicable in the case of reservations made at the time of ratification or adherence.

"B. RESERVATIONS MADE AT THE TIME OF RATIFICATION OR ADHERENCE

"1. At the time of ratification or adherence, reservations may be made in the manner and under the conditions stipulated in the treaty itself or agreed to by the signatories.

"2. In the absence of any stipulation in the treaty itself or of an agreement between the signatories with respect to the making of reservations at the time of ratification or adherence, such reservations may be made if within six months after their official notification none of the signatory States objects to them as being incompatible with the purpose or object of the treaty. The reservations shall be considered to have been accepted by a signatory State which does not, within the said period of six months, make objection thereto on any other ground.

"3. If there is an allegation of incompatibility, the General Secretariat of the Organization of American States on its own initiative and in accordance with its prevailing rules of procedure shall consult the signatory States, and the reservations shall not be admitted if

within six months they are deemed to be incompatible by at least one-third of such States.

"4. In the case of treaties opened for signature for a fixed or indefinite time, the applicable rules shall be those governing reservations made at the time of ratification or adherence.

"C. GENERAL RULES

"1. It is advisable to include in future multilateral treaties precise stipulations regarding the admissibility or inadmissibility of reservations, as well as the legal effects attributed to these, should their terms be accepted.

"2. The legal effects of reservations are the following:

"(a) The treaty shall be in force as signed, as between countries that have ratified it without reservations.

"(b) The treaty shall be in force as modified by the reservations, as between States that have ratified with reservations and States that have ratified it and accepted such reservations.

"(c) The treaty shall not be in force between a State that has ratified it with reservations and a State that has ratified it and not accepted such reservations.

"3. Any State may withdraw its reservations at any time, either before or after they have been accepted by other States.

"4. The prevailing rules of procedure referred to in paragraph B 3 are the rules approved in resolution XXIX of the Eighth International Conference of American States and those rules that may be approved by proper authority in the future."⁵⁵

(c) *Consideration of the fundamental points by Committee I*

75. Nearly all the representatives spoke in the general discussion. The great majority considered that the Council should take a definitive decision concerning the rules which would in future govern the legal effects of reservations to multilateral treaties.

76. The Cuban representative suggested the following procedure: the Council of Jurists would adopt a preliminary draft, or fundamental points, of a treaty, which would be transmitted to Governments for their comments; the draft, together with the comments by Governments, would then be submitted to the Juridical Committee for further discussion, whereupon it would be included in the agenda of the fourth meeting of the Council of Jurists; after discussion at that meeting, a complete draft, in a form suitable for a convention, would be submitted by resolution of the Council to the Eleventh Inter-American Conference.⁵⁶

77. When the Working Group's draft was discussed as a whole, the representatives of Cuba, Panama, El

⁵⁵ Third Meeting of the Inter-American Council of Jurists, session of 21 January 1956, document 21.

⁵⁶ *Ibid.*, Committee I, records of fourth session, document 27.

Salvador and Mexico offered some comments and expressed reservations in general terms.⁵⁷

78. The representatives of Chile, El Salvador, Uruguay, Mexico, Colombia and the United States commented on the proposed division of the draft into three parts; they were not convinced of the wisdom of the division or of the idea of making special rules governing reservations made at the time of signature.

79. After a number of amendments to various paragraphs had been discussed, the document as a whole was put to the vote and approved by 12 votes to 2, with 4 abstentions.

80. Lastly, the Committee adopted unanimously a Cuban draft resolution to the effect that the draft rules would be transmitted to the Council of the Organization of American States, which would then invite Governments to comment thereon, and that the Juridical Committee should take into consideration both the draft rules and the comments by Governments when preparing revised rules for submission to the fourth meeting of the Council of Jurists.

(d) *Consideration of the draft at the plenary session of the Council*

81. At the fourth plenary session, the draft rules were further amended. The Honduran representative proposed that the following passage should be added in part C, after paragraph 2 (c): "In no case shall reservations accepted by the majority of the States have any effect with respect to a State that has rejected them. The amendment was adopted by 15 votes to 1, with 4 abstentions.

82. Some States declared that they would abstain from voting in favour of the draft general rules but would vote in favour of the draft resolution.⁵⁸

83. Lastly, the Council adopted by 17 votes to none, with 3 abstentions, a Mexican proposal⁵⁹ that the third paragraph of the preamble of the draft resolution should be amended to read: "Having considered that report, including the dissenting opinions annexed thereto, as well as draft proposals submitted by various delegations, the Council has prepared a series of draft rules to serve as the basis for further studies by inter-American organizations and the Governments".

84. The draft rules and the draft resolution, amended as mentioned above, were put to the vote separately; the former were approved by 14 votes to none, with 5 abstentions, and the latter was approved unanimously.⁶⁰

⁵⁷ *Ibid.*, p. 7.

⁵⁸ United States, Chile. Third Meeting of the Inter-American Council of Jurists, records of fourth plenary session, document 113, p. 30 ff.

⁵⁹ *Ibid.*, p. 33.

⁶⁰ The draft resolution presented to the Council by Committee I and approved by the Council is reproduced in its final form in annex IV.

CHAPTER II

Co-operation between the Inter-American Council of Jurists and the International Law Commission

1. *Past references to co-operation*

85. Article 61 of the Charter of the Organization of American States provides that "The organs of the Council of the Organization shall, in agreement with the Council, establish co-operative relations with the corresponding organs of the United Nations and with the national or international agencies that function within their respective spheres of action".

86. The United Nations General Assembly for its part, in establishing the International Law Commission in 1947, included in article 26, paragraph 4, of the Commission's Statute a provision recognizing "the advisability of consultation by the Commission with inter-governmental organizations whose task is the codification of international law, such as those of the Pan-American Union".

87. The subject of "Collaboration with the International Law Commission of the United Nations" first appeared on the agenda of the Inter-American Council of Jurists at its first meeting, held at Rio de Janeiro in 1950. In the *Handbook* for that meeting, the Executive Secretary of the Pan-American Union said:

"It is to be hoped, however, that in due time contact may be established between the International Law Commission and the Inter-American Council of Jurists so as to avoid, as far as possible, duplication of effort, and to work, whenever the subject matter so requires, on common bases."⁶¹

88. At the same meeting, the Council of Jurists, considering it desirable to establish co-operation in the interests of the work of both bodies, adopted a resolution requesting the Executive Secretary of the Pan American Union:

"1. To serve as the channel of communication with the International Law Commission on behalf of the Inter-American Council of Jurists and of its Permanent Committee, the Inter-American Juridical Committee;

"2. To respond, in so far as possible, to any request from the International Law Commission for documents, and to provide other information at his disposal;

"3. To request, at his discretion and in conformity with whatever agreement may be entered into with the International Law Commission, the documents or other information considered advisable in order to facilitate the work of the Council of Jurists;

"4. To establish and maintain co-operative relations with the International Law Commission, in consultation with the Permanent Committee and the Council of the Organization of American States, it being understood that any arrangement tending to have permanent force and effect should be regarded as provisional until approved by the Council of Jurists in agreement with the Council of the Organization;

⁶¹ *Handbook: First Meeting of the Inter-American Council of Jurists* (Washington, D.C., Pan American Union, 1950).

"5. To include the Permanent Committee, to such extent as is considered appropriate after consultation with the Committee, in all arrangements entered into with the International Law Commission pursuant to the foregoing paragraph."

89. When at its sixth session, held in 1954, the International Law Commission again considered the subject of co-operation with international bodies, it adopted the following resolution which had been proposed by Mr. F. V. Garcia Amador:

"Resolves to ask the Secretary-General to take such steps as he may deem appropriate in order to establish a closer co-operation between the International Law Commission and the Inter-American bodies whose task is the development and codification of international law."⁶²

90. Most recently, at its seventh session, the Commission adopted a resolution⁶³ in which it referred to the resolution adopted at the preceding session, noted the oral report of the representative of the Secretary-General of the United Nations concerning the steps taken to carry out the terms of that resolution, and, considering that further contact should be established between the Commission and the Inter-American Council of Jurists through the participation of their respective secretaries in these bodies, decided to request the Secretary-General to authorize the Secretary of the Commission to attend the third meeting of the Inter-American Council of Jurists.⁶⁴

2. *Statement by the Secretary of the International Law Commission before the first plenary session of the Council's Third Meeting*

91. At the first plenary session of the Council's third meeting, the Secretary of the International Law Commission said that the resolution adopted by the Commission, and his own presence in the Council as the Commission's Secretary, marked the culmination of a prolonged endeavour to co-ordinate the efforts made, both in Inter-American bodies and in the United Nations, to promote the development and codification of international law.

92. The objects of the two bodies were very similar, he said; while the object of the Commission was "the promotion of the progressive development of international law and its codification", one of the purposes of the Council was "to promote the development and the codification of public and private international law".

93. Furthermore, they employed broadly similar methods; whereas, however, the Inter-American Council's drafts on the development of international law could take the form of opinions or reports, the decisions of the Commission had to be in the form of articles of draft conventions.

94. After referring to past contracts between the two bodies, he said that in view of their common objects the

relationship between them should be closer. A pooling of efforts would not only facilitate the task but would also tend to produce more fruitful results.⁶⁵

3. *Joint draft resolution proposed by the delegations of Colombia, Cuba and Peru*

95. A draft resolution concerning co-operation with the International Law Commission was first proposed at this meeting of the Council by the representative of Cuba. It suggested that the Secretary-General of the Organization of American States should authorize a representative of the Executive Secretariat of the Inter-American Council of Jurists to attend, as an observer, the meetings of the International Law Commission of the United Nations.⁶⁶

96. Under amendments proposed by the representative of Colombia, it was suggested that, firstly, the Secretary-General of the Organization of American States should authorize the Executive Secretary of the Council of Jurists and, secondly, the Inter-American Juridical Committee should authorize one of its members, to attend the meetings of the International Law Commission as observers.⁶⁷

97. A number of representatives having commented on the draft and on the procedure to be followed, it was decided, in the light of these comments, to defer consideration of the draft until the fourth plenary session.⁶⁸

98. At that session, the representatives of Cuba, Colombia and Peru proposed the following draft resolution which was approved unanimously:

"Whereas:

"At its first meeting the Inter-American Council of Jurists approved a resolution to establish co-operative relations with the International Law Commission of the United Nations;

"That Commission, during its seventh period of sessions, decided to request the Secretary-General of the United Nations to authorize the Secretary of the Commission to attend this third meeting as an observer, and in accordance with that request the Secretary of the Commission has been present in that capacity during the deliberations; and

"Article 4 of the Statutes of the Inter-American Council of Jurists provides that when the co-operation of specialized agencies implies the establishment of permanent relations with the corresponding organs of the United Nations, the Inter-American Council of Jurists may act only in agreement with the Council of the Organization of American States;

"The Inter-American Council of Jurists resolves:

"1. To express its opinion that it would be desirable for the Organization of American States to study the

⁶² *Official Records of the General Assembly, Ninth Session, Supplement No. 9*, para. 77.

⁶³ *Ibid.*, Tenth Session, Supplement No. 9, para. 36.

⁶⁴ See paragraphs 1 to 4 above.

⁶⁵ From the statement made by Dr. Yuen-li Liang, Secretary of the International Law Commission, at the Third Meeting of the Inter-American Council of Jurists, Mexico City, 18 January 1956.

⁶⁶ Third Meeting of the Inter-American Council of Jurists, document 57.

⁶⁷ *Ibid.*, document 73.

⁶⁸ *Ibid.*, second and third plenary sessions, 1 and 2 February 1956, documents 91 and 104.

possibility of having its juridical agencies represented as observers at the sessions of the International Law Commission of the United Nations;

"2. To record its satisfaction at nothing the presence of the Secretary of the International Law Commission of the United Nations at this Third Meeting of

the Council, which it considers as the beginning of direct recognition by both agencies of their respective work, to the advantage of the development of international law."⁶⁹

⁶⁹ *Ibid.*, fourth plenary session, 3 February 1956, document 106.

ANNEXES

Annex I

RESOLUTION XIII OF THE THIRD MEETING OF THE INTER-AMERICAN COUNCIL OF JURISTS APPROVED AT THE FOURTH PLENARY SESSION, 3 FEBRUARY 1956 PRINCIPLES OF MEXICO ON THE JURIDICAL REGIME OF THE SEA

Whereas:

The topic "System of Territorial Waters and Related Questions: Preparatory Study for the Specialized Inter-American Conference Provided for in resolution LXXXIV of the Caracas Conference" was included by the Council of the Organization of American States on the agenda of this Third Meeting of the Inter-American Council of Jurists; and

Its conclusions on the subject are to be transmitted to the Specialized Conference soon to be held.

The Inter-American Council of Jurists

Recognizes as the expression of the juridical conscience of the Continent, and as applicable between the American States, the following rules, among others; and

Declares that the acceptance of these principles does not imply and shall not have the effect of renouncing or prejudicing the position maintained by the various countries of America on the question of how far territorial waters should extend.

A

Territorial waters

1. The distance of three miles as the limit of territorial waters is insufficient, and does not constitute a general rule of international law. Therefore, the enlargement of the zone of the sea traditionally called "territorial waters" is justifiable.

2. Each State is competent to establish its territorial waters within reasonable limits, taking into account geographical, geological, and biological factors, as well as the economic needs of its population, and its security and defense.

B

Continental shelf

The rights of the coastal State with respect to the sea-bed and subsoil of its continental shelf extend also to the natural resources found there, such as petroleum, hydrocarbons, mineral substances, and all marine, animal, and vegetable species that live in a constant physical and biological relationship with the shelf, not excluding the benthonic species.

C

Conservation of living resources of the high seas

1. Coastal States have the right to adopt, in accordance with scientific and technical principles, measures of conservation and supervision necessary for the protection of the living resources of the sea contiguous to their coasts, beyond territorial waters. Measures taken by a coastal State in such case shall not prejudice

rights derived from international agreements to which it is a party, nor shall they discriminate against foreign fishermen.

2. Coastal States have, in addition, the right of exclusive exploitation of species closely related to the coast, the life of the country, or the needs of the coastal population, as in the case of species that develop in territorial waters and subsequently migrate to the high seas, or when the existence of certain species has an important relation to an industry or activity essential to the coastal country, or when the latter is carrying out important works that will result in the conservation or increase of the species.

D

Base lines

1. The breadth of territorial waters shall be measured, in principle, from the low-water line along the coast, as marked on large-scale marine charts officially recognized by the coastal State.

2. Coastal States may draw straight base lines that do not follow the low-water line when circumstances require this method because the coast is deeply indented or cut into, or because there are islands in its immediate vicinity, or when such a method is justified by the existence of economic interests peculiar to a region of the coastal State. In any of these cases the method may be employed of drawing a straight line connecting the outermost points of the coast, islands, islets, keys, or reefs. The drawing of such base lines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within these lines must be sufficiently linked to the land domain.

3. Waters located within the base line shall be subject to the régime of internal waters.

4. The coastal State shall give due publicity to the straight base lines.

E

Bays

1. A bay is a well-marked indentation whose penetration inland in proportion to the width of its mouth is such that its waters are *inter fauces terrae*, constituting something more than a mere curvature of the coast.

2. The line that encloses a bay shall be drawn between its natural geographical entrance points where the indentation begins to have the configuration of a bay.

3. Waters comprised within a bay shall be subject to the juridical régime of internal waters if the surface thereof is equal to or greater than that of a semicircle drawn by using the mouth of the bay as a diameter.

4. If a bay has more than one entrance, this semicircle shall be drawn on a line as long as the sum total of the length of the different entrances. The area of the islands located within a bay shall be included in the total area of the bay.

5. So-called "historical" bays shall be subject to the régime of internal waters of the coastal State or States.

Annex II

REPORT OF THE SPECIAL COMMITTEE APPOINTED BY THE GOVERNING BODY OF THE PAN AMERICAN UNION TO STUDY THE PROCEDURE TO BE FOLLOWED IN THE DEPOSIT OF RATIFICATIONS

The undersigned, members of the Committee appointed by the Board to study the procedure to be followed by the Pan American Union in the deposit of instruments of ratification of treaties and conventions, have the honour to submit for the consideration of the Board the following report:

The procedure to be followed by the Pan American Union with respect to the deposit of ratifications, pursuant to article 7 of the Convention on the Pan American Union, signed at the Sixth International Conference of American States, shall be the following, unless provisions of a particular treaty provide otherwise:

1. To assume the custody of the original instrument.
2. To furnish copies thereof to all the signatory Governments.
3. To receive the instruments of ratification of the Signatory States, including the reservations.
4. To communicate the deposit of ratifications to the other Signatory States, and, in the case of reservation, to inform them thereof.
5. To receive the replies of the other signatory States as to whether or not they accept the reservations.
6. To inform all the States signatory to the treaty, if the reservations have or have not been accepted.

With respect to the legal states of treaties to which reservations are made but not accepted, the Governing Board of the Union understands that:

1. The treaty shall be in force, in the form in which it was signed, as between those countries which ratify it without reservations, in the terms in which it was originally drafted and signed;
2. It shall be in force as between the Governments which ratify it with reservations and the signatory States which accept the reservations in the form in which the treaty may be modified by said reservations;
3. It shall not be in force between a Government which may have ratified with reservations and another which may have already ratified, and which does not accept such reservations.

The procedure suggested by the Committee is purely provisional, inasmuch as, strictly speaking, the function of depository of the instruments of ratification to be performed by the Pan American Union for the first time by virtue of the treaties signed at Havana is also provisional, as long as those treaties have not been unanimously ratified.

In other respects, the points involved in this procedure are very complex, and touch on a problem of international law still much debated, which the Committee believes should be solved in a final manner by the Seventh International Conference of American States and not be a simple interpretative provision of the Governing Board of the Pan American Union.

The Committee consequently considers it advisable, without prejudice to these provisional rules, that this matter should be submitted to the Seventh International Conference of American States and also brought to the attention of the American Institute of International Law.

Felipe A. ESPIL
Ambassador of Argentina
Miguel CRUCHAGA
Ambassador of Chile
Fabio LOZANO
Minister of Colombia

Annex III

RULES ON THE RATIFICATION OF TREATIES APPROVED BY THE GOVERNING BODY OF THE PAN AMERICAN UNION ON 2 MAY 1934

The following measures would be conducive to giving practical effect to the desire repeatedly expressed by the International Conferences of American States, as set forth in the above-mentioned resolutions:

1. Once treaties or conventions have been signed, the Government of the country in which the conference is held should remit to each of the signatory States, as soon as possible after the adjournment of the conference, a certified copy of each of the treaties and conventions signed at the conference.
2. The signatory Governments should be urged, in so far as constitutional provisions may permit, to submit the treaties and conventions to their respective Congresses at the first opportunity following the receipt of the certified copies mentioned in the preceding paragraph.
3. The Pan American Union shall transmit, every six months, through the members of the Governing Board, a chart showing the status of the ratifications, reservations, adherences, accessions and denunciations of treaties and conventions signed at conferences held by countries members of the Union.
4. The Pan American Union shall address a communication to each of the American Governments requesting that, in accordance with resolution LVII of 23 December 1933 of the Seventh International Conference of American States, and with the sole purpose of studying the possibility of finding a formula acceptable to the majority of the countries members of the Union, the respective Government make known the objections which it may have to the conventions open to its signature or awaiting ratification by its national Congress.

The communication, while recognizing the right of each State to decide in accordance with its interests the question of the ratification of treaties and conventions signed at the international conferences of American States, shall furthermore request each Government to communicate to the Pan American Union the modifications which in its judgement will make ratification possible.

5. The communication addressed to the American Governments in accordance with the preceding paragraphs shall be sent once a year, an endeavour being made to send it at the time of the regular session of the respective Congress.

Annex IV

RESOLUTION XV OF THE THIRD MEETING OF THE INTER-AMERICAN COUNCIL OF JURISTS
RESERVATIONS TO MULTILATERAL TREATIES

Whereas:

The Council of the Organization of American States entrusted to the Inter-American Juridical Committee the study of the legal effect of reservations made to multilateral pacts at any stage, whether at the time of signature, of ratification, or of adherence;

In response to that request, the Juridical Committee prepared a report that has been submitted to the Inter-American Council of Jurists for consideration at its Third Meeting;

Having considered that report, including the dissenting opinions annexed thereto, as well as draft proposals submitted by various delegations, the Council has prepared a series of draft rules to serve as the basis for further studies by inter-American organizations and the Governments; and

The draft rules prepared by the Council of Jurists, as indicated in the request of the Council of the Organization of American States, should be transmitted to that body,

*The Inter-American Council of Jurists**Resolves:*

1. To request the Council of the Organization of American States to forward the draft prepared by the Inter-American Council of Jurists on the effects of reservations to multilateral treaties to the Member Governments in order that they may make any observations thereon that they consider advisable;

2. To ask the Inter-American Juridical Committee to take into account the above-mentioned draft and the observations of the Member Governments and to prepare a second draft of rules to be presented to the Fourth Meeting of the Inter-American Council of Jurists.

**DRAFT RULES APPLICABLE TO RESERVATIONS TO
MULTILATERAL TREATIES SUBMITTED BY THE INTER-
AMERICAN COUNCIL OF JURISTS**

A*Reservations made at the time of signing*

1. A State that desires to make reservations to a multilateral treaty at the time of collective signature shall transmit the text thereof to all States that have taken part in the negotiations, at least forty-eight hours in advance, unless some other period has been agreed upon in the course of the deliberations.

2. The States to which the aforementioned communication has been made shall notify the other States and the State that is making the reservations, before the collective signing, as to whether they accept the said reservations or not.

3. Reservations that have been expressly rejected, even though in part, by the majority of the States present at the signing, shall not be admitted.

B*Reservations made at the time of ratification or adherence*

1. At the time of ratification or adherence, reservations may be made in the manner and under the conditions stipulated in the treaty itself or agreed to by the signatories.

2. In the absence of any stipulation in the treaty itself or of agreement between the signatories with respect to the making of reservations at the time of ratification or adherence, such reservations may be made if within six months after the official notification thereof none of the signatory States objects to them as

being incompatible with the purpose or object of the treaty. The reservations shall be considered accepted by a signatory State that does not object to them on any other ground within the six-month period.

3. If there is an allegation of incompatibility, the General Secretariat of the Organization of American States shall, on its own initiative and in accordance with its prevailing rules of procedure, consult the signatory States, and the reservations shall not be admitted if within six months they are deemed to be incompatible by at least one-third of such States.

4. In the case of treaties opened for signature for a fixed or an indefinite time, the applicable rules shall be those governing reservations made at the time of ratification or adherence.

5. A reservation that is not repeated in the instrument of ratification shall be deemed to have been abandoned.

C*General rules*

1. It is advisable to include in multilateral treaties precise stipulations regarding the admissibility or inadmissibility of reservations, as well as the legal effects attributable to them, should they be accepted.

2. The legal effects of reservations are in general the following:

(a) As between countries that have ratified without reservations, the treaty shall be in force in the form in which the original text was drafted and signed.

(b) As between the States that have ratified with reservations and those that have ratified and accepted such reservations, the treaty shall be in force in the form in which it was modified by the said reservations.

(c) As between a State that has ratified with reservations and another State that has ratified and not accepted such reservations, the treaty shall not be in force.

(d) In no case shall reservations accepted by the majority of the States have any effect with respect to a State that has rejected them.

3. Any State may withdraw its reservations at any time, either before or after they have been accepted by the other States.

4. The prevailing rules of procedure referred to in paragraph B-3 are the six rules approved in resolution XXIX of the Eighth International Conference of American States and those rules that may be approved by the competent organ in the future.

DOCUMENT A/CN.4/102/Add.1

**Addendum to the report by the Secretary of the Commission on the proceedings of the Third Meeting
of the Inter-American Council of Jurists**

[Original text: Spanish]

[7 May 1956]

The present document contains the "Ciudad Trujillo Resolution" adopted by the Inter-American Specialized Conference on "Conservation of Natural Resources: The Continental Shelf and Marine Waters", held at Ciudad Trujillo in 1956. The Conference was referred to in resolution XIII of the Third Meeting of the Inter-American Council of Jurists, reproduced in annex I to document A/CN.4/102.

RESOLUTION OF CIUDAD TRUJILLO¹

The Inter-American Specialized Conference on "Con-

servation of Natural Resources: The Continental Shelf and Marine Waters",

Considering:

That the Council of the Organization of American States, in fulfilment of Resolution LXXXIV of the Tenth Inter-American Conference held in Caracas in March

¹ *Inter-American Specialized Conference on "Conservation of Natural Resources: The Continental Shelf and Marine Waters", Ciudad Trujillo, March 15-28, 1956, Final Act* (Washington, D.C., Pan American Union, 1956), p. 13.

1954, convoked this Inter-American Specialized Conference "for the purpose of studying as a whole the different aspects of the juridical and economic system governing the submarine shelf, oceanic waters, and their natural resources in the light of present-day scientific knowledge"; and

That the Conference has carried out the comprehensive study that was assigned to it,

I

Revolves:

To submit for consideration by the American States the following conclusions:

1. The sea-bed and subsoil of the continental shelf, continental and insular terrace, or other submarine areas, adjacent to the coastal State, outside the area of the territorial sea, and to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the sea-bed and subsoil, appertain exclusively to that State and are subject to its jurisdiction and control.

2. Agreement does not exist among the States here represented with respect to the juridical régime of the waters which cover the said submarine areas, nor with respect to the problem of whether certain living resources belong to the sea-bed or to the superjacent waters.

3. Co-operation among States is of the utmost desirability to achieve the optimum sustainable yield of the living resources of the high seas, bearing in mind the continued productivity of all species.

4. Co-operation in the conservation of the living resources of the high seas may be achieved most effectively through agreements among the States directly interested in such resources.

5. In any event, the coastal State has a special interest in the continued productivity of the living resources of the high seas adjacent to its territorial sea.

6. Agreement does not exist among the States represented at this Conference either with respect to the nature and scope of the special interest of the coastal State, or as to how the economic and social factors which such State or other interested States may invoke should be taken into account in evaluating the purposes of conservation programmes.

7. There exists a diversity of positions among the States represented at this Conference with respect to the breadth of the territorial sea.

II

Therefore, this Conference does not express an opinion concerning the positions of the various participating States on the matters on which agreement has not been reached and

Recommends:

That the American States continue diligently with the consideration of the matters referred to in paragraphs 2, 6, and 7 of this resolution with a view to reaching adequate solutions.