PRIORITY (Security Classification)

# FOREIGN SERVICE DESPATCH

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FROM : Amembassy, MEXICO, D. F. — 838 DESP. NO.

TO : THE DEPARTMENT OF STATE, WASHINGTON. — March 9, 1959 DATE

REF : Embtel 2051, March 3, 1959; Deptel 1705, March 6, 1959; Embtel 2098, March 9, 1959

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SUBJECT: 2nd United Nations Conference on the Law of the Sea: Mexican Position on Extension of the Territorial Sea

Transmitted herewith is the original Spanish text of the Memorandum, dated March 4, 1959, which was delivered to the Embassy from the Ministry of Foreign Relations on the evening of March 6, 1959 (Enclosure No. 1). An English translation of the Memorandum is also attached (Enclosure No. 2).

The two documents which were carried as annexes to the Memorandum and identified therein, are forwarded in English translation only, inasmuch as they are copies or excerpts of statements made at the United Nations by the Mexican Delegate and may therefore be obtained in original form from the U. N. Secretariat should such be desirable.

The Embassy wishes to point out that while the Foreign Office Memorandum relates to the action of Panama in extending its territorial sea to twelve miles, it was actually received after inquiry had been made of the Ministry on March 3, 1959, concerning Mexico's attitude toward a similar action by Libya. The substance of the matter, however, is the same in both cases.

Note should be taken of the fact that the Memorandum does not make any mention of Ambassador Rafael de la Colima, Permanent Delegate of Mexico to the United Nations, with whom it is understood conversations were held during the first ten days of December regarding the U. N. resolution, and also regarding the action of Panama.

Further action by the Embassy in this matter will await the specific instructions of the Department.

For the Chargé d'Affaires, a. i.,

R. G. Leddy

Raymond G. Leddy
Counselor of Embassy

Enclosures: atl M. M.

1. Spanish Text of Memorandum
2. English Text of Memorandum, with two Annexes

POL:RGLeddy/rw
REPORTER

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(Classification)

Desp. No. 838
From México, D. F.

(Sello - Secretaría de Relaciones Exteriores, Estados Unidos Mexicanos)

**M E M O R A N D U M**

No. 120810

Los debates de la Sexta Comisión de la Asamblea General de las Naciones Unidas durante su décimotercer período de sesiones en relación con el tema 59 del Programa de la Asamblea intitulado "Cuestión de la convocación a una segunda Conferencia de las Naciones Unidas sobre el Derecho del Mar", lo mismo que el resultado de las votaciones efectuadas en la 596 sesión de la Comisión, celebrada el 4 de diciembre de 1958, sobre las propuestas presentadas respecto al tema mencionado, demostraron en forma concluyente que los Estados Miembros se hallaban divididos en dos grupos aproximadamente iguales. Uno de esos grupos en el que se encontraban los Estados Unidos y los otros diez Estados patrocinadores del proyecto conjunto de resolución A/C.6/L.435 propugnaba que la Asamblea dicidiese convocar a una Segunda Conferencia sobre el Derecho del Mar para julio o agosto de 1959; el segundo grupo del que formaban parte México y los otros seis Estados coautores de la enmienda A/C.6/L.440 sostenía la conveniencia de que antes de que se resolviera la convocación de una segunda conferencia, la Asamblea General considerase en su décimocuarto período de sesiones el "procedimiento para conseguir un acuerdo sobre las cuestiones de la anchura del mar territorial y los límites de las pesquerías, incluyendo el examen del fondo de esas cuestiones si así fuera decidido".

Tomando en cuenta esta divergencia de opiniones resultaba evidente que la aprobación del proyecto conjunto de los once países por una escasa mayoría de la Comisión estaba lejos de constituír un buen augurio para el éxito de la proyectada Conferencia y hacía prever, por el contrario, que ésta terminaría en un fracaso desalentador.

De ahí que la Delegación de México, convencida de la necesidad de crear condiciones favorables para que se pueda lograr un acuerdo general sobre las dos cuestiones que dejó pendientes la Conferencia de Ginebra--anchura del mar territorial y límites de las pesquerías--al explicar su voto en la Sexta Comisión haya recalcado la necesidad de que, antes de llegar a la Plenaria, se hicieran serios esfuerzos para encontrar un texto que estableciera un método que pudiese recibir aprobación unánime de la Asamblea. El Representante de México en la Comisión terminó su intervención al respecto con las siguientes palabras: "Estamos persuadidos, en efecto, como ya lo dije en una de mis intervenciones anteriores, de que sólo así habremos puesto cimientos sólidos para nuestra futura labor tendiente a conseguir una parecida unanimidad en cuanto al fondo del problema".

Guiada por esta convicción, la Delegación de México tuvo varias conversaciones informales con la Delegación de los Estados Unidos, del 8 al 10

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de diciembre, como resultado de las cuales se llegó a un acuerdo en el sentido de que la fecha prevista en el proyecto conjunto de los once países para la convocación de la Conferencia (julio o agosto de 1959) se postergase hasta "marzo o abril de 1960". La Delegación de los Estados Unidos tomó a su cargo obtener el asentimiento de los demás coautores del proyecto conjunto en cuestión, y la Delegación de México se comprometió a conseguir el apoyo de los demás copatrocinadores de la enmienda conjunta original para la presentación, con el mismo patrocinio, de una nueva enmienda que se distribuyó como documento A/L.253 y que al ser aprobada en la 783 sesión plenaria de la Asamblea, el 10 de diciembre, permitió que se adoptase en la misma sesión, por 71 votos a favor, ninguno en contra y 6 abstenciones, el proyecto de resolución de la Sexta Comisión así enmendado. La participación activa de la Delegación de México en las conversaciones informales que permitieron ese resultado fué indudablemente una de las contribuciones más constructivas en la materia.

La enmienda conjunta A/L.253 tuvo la siguiente redacción:

"Substitúyanse en el párrafo 2 de la parte dispositiva las palabras "en julio o agosto de 1959" por "en la fecha más próxima de marzo o abril de 1960 que se estime conveniente",

Como se ve el texto de la enmienda es muy claro y no puede prestarse a interpretaciones ambiguas. Además el Representante de México, al introducir formalmente la enmienda en nombre propio y de todos los otros coautores, explicó en su intervención (anexo 1), también en forma clara e inequívoca, el espíritu y la intención de las Delegaciones copatrocinadoras que, esencialmente, consistía en hacer posible que el proyecto de resolución de la Sexta Comisión fuese aprobado por unanimidad, y permitir que pudiera llevarse a cabo una labor preparatoria concienzuda que crease condiciones favorables para la eventual adopción de una fórmula general de derecho que corresponda a la práctica internacional de nuestros días y que dé satisfacción a los intereses legítimos del Estado ribereño, sin olvidar en momento alguno que las Naciones Unidas están basadas en el principio de la igualdad soberana de todos sus Miembros.

Si bien es cierto que algunos de los catorce Representantes que hicieron uso de la palabra en la 783 sesión plenaria antes de que la enmienda fuera puesta a votación, se refirieron directa o indirectamente a la posición o expectativas de sus respectivos Gobiernos, también lo es que tales declaraciones sólo podrían comprometer en cada caso al Gobierno de que se trate, como, por lo demás, lo demuestra el hecho de que se inspiraran en tesis a veces totalmente opuestas, según puede verse en los párrafos de algunas de ellas que a continuación se reproducen en el orden en que las declaraciones fueron pronunciadas:

El Representante de Irlanda:

"Se nos ha señalado, también, que no podemos asumir esta posición en forma unilateral. ¿Por qué? Cerca de 30 naciones, hasta este momento, han aceptado este criterio. ¿Por qué suponer que nosotros debemos ser los únicos que debemos esperar la aprobación universal".

El Representante de los Estados Unidos:

"Nosotros esperamos una plena cooperación en la segunda conferencia y una atmósfera conciliatoria durante el período necesario de preparativos anteriores a la conferencia. Se sobre entiende que durante este período los gobiernos no deben tomar medidas que pongan en peligro el éxito de la conferencia".

El Representante de Noruega:

"En general, es imposible que el Gobierno noruego se comprometa a abstenerse más allá del año 1959, de tomar las medidas necesarias para proteger a su población costera, de conformidad con nuestro concepto de las reglas existentes en el derecho internacional".

El Representante del Japón:

"Mi Delegación votará a favor de esta enmienda en la esperanza de que su aprobación aumente la posibilidad de éxito de la conferencia proyectada. Votará en la esperanza de que no se tomará ninguna medida unilateral antes de la Conferencia por Estados Miembros, porque se podría agravar la situación ya caótica acerca de la anchura del mar territorial".

El Representante de la U.R.S.S.:

"Creo que en las condiciones reinantes con motivo de continua presión y el use de la fuerza contra ese pequeño país nórdico (Islandia) que vive casi exclusivamente de sus recursos pesqueros, no se podrá crear la base necesaria para llegar a un acuerdo, que podría constitufr el éxito de la segunda conferencia sobre el derecho del mar. Si estas tentativas no fueran abandonadas, no habrá ambiente propicio para preparar en forma seria y constructiva esta conferencia".

El Representante de Australia:

"Sin embargo acogemos la enmienda con el sentido y en los términos en que fué presentada por el representante Mexicano, a saber, una propuesta negociada que representa importantes concesiones de ambas partes de una Comisión muy dividida sobre los puntos que abarca la enmienda".

El Representante de Túnez:

"De manera que nuestra delegación votará en favor de la resolución A/L.253, puesto que ésta podrá conducirnos a la transacción. Sin embargo, quisiéramos precisar que nuestro Gobierno reserva totalmente su derecho con respecto a las medidas que podrían tener en cuenta las cuestiones de fondo que se estudien en las próximas conferencias de las Naciones Unidas sobre el derecho del mar".

La anterior recapitulación, que se ajusta fielmente a los hechos, tal como éstos sucedieron, permite examinar con una perspectiva correcta la cuestión a que se refiere el memorándum de la Embajada de los Estados Unidos en México fechado el 23 de diciembre de 1958. Como se desprende de esa recapitulación, y en especial de lo que se ha dicho respecto a los textos de la enmienda conjunta y de la intervención del Representante de México al introducirla formalmente en la 783 sesión plenaria, en ningún momento trató éste último de que los Estados que votasen en favor de la enmienda cuyo texto se limitaba a un simple cambio de fechas, contrajesen el compromiso, ni expreso ni tácito, de abstenerse de lo que el Gobierno de los Estados Unidos llama "actos unilaterales", ni hubo en la participación de la Delegación de México elemento alguno que pudiese permitir tal interpretación.

Conviene recordar al respecto que el Gobierno de México comparte--como lo expuso su Representante en la Sexta Comisión el 26 de noviembre de 1958 (anexo 2)--el criterio expuesto por la Corte Internacional de Justicia en uno de sus fallos en el sentido de que, "el acto de delimitación propiamente tal es necesariamente un acto unilateral, ya que el Estado ribereño es el único que tiene competencia para realizarlo". También comparte la opinión expresada por la Corte en el mismo fallo de que "la validez de la delimitación respecto de los terceros Estados depende del derecho internacional" y sostiene al respecto que, como nunca hasta ahora se ha logrado codificar la anchura del mar territorial en un instrumento internacional, el único derecho internacional aplicable tiene que ser el que se funda en la costumbre internacional originada por la práctica esencialmente coincidente, por la suma de actos unilaterales análogos, de la mayoría de los Estados, costumbre que ha creado la que podría llamarse la "norma consuetudinaria de derecho internacional vigente en la materia", conforme a la cual los Estados poseen la facultad soberana de fijar distintas

extensiones a su respectivo mar territorial dentro del límite máximo de doce millas.

De ahí que el Gobierno de México tenga por la nueva legislación promulgada por el Gobierno de Panamá, a la que se refiere el memorándum de la Embajada de los Estados Unidos, el mismo respeto que le merecen todas las medidas análogas dictadas por otros Estados--tales como, para no citar sino algunas de las más recientes, las tomadas por Indonesia, Arabia Saudita, Islandia e Irak--en el ejercicio legítimo de su soberanía y de conformidad con lo que, en opinión del Gobierno de México, constituye la norma de derecho internacional vigente en la materia.

Por otra parte, en lo que atañe al Gobierno de Panamá, éste había ya expresado claramente su opinión respecto al punto de que se trate, desde hace casi un año, en la última sesión plenaria de la Conferencia de Ginebra, la vigésimaprimera, celebrada el 27 de abril de 1958. Entre las propuestas sometidas a la consideración de esa sesión de la Conferencia figuró la presentada por Australia, Canadá, Ceilán y Ghana con la sigla A/CONF.13/L.49 --que no llegó a ser puesta a votación debido a la oposición que provocó-- cuyo primer párrafo resolutivo disponía lo siguiente:

> "Recomendar que todos los Estados, hasta que se conozca el resultado de las negociaciones aplazadas que se mencionan, se abstengan de extender los límites de su mar territorial o los límites en los que reivindican derechos exclusivos de pesca".

Al referirse a dicho párrafo, el Presidente de la Delegación panameña, señor Carlos Sucre, expuso lo que en el Acta resumida de la sesión antes citada se encuentra consignado como sigue:

> "Refiriéndose al proyecto de resolución de las cuatro potencias, dice que el párrafo a) de la parte dispositiva es inaceptable porque impone una obligación injusta a los Estados que esperaban que las normas de su legislación nacional serían consagradas por una declaración general de la Conferencia. Su delegación no puede compartir la opinión del representante del Reino Unido de que la libertad de acción de los Estados puede impedir que se llegue a un acuerdo sobre la delimitación de las zonas del mar. Es la acción unilateral emprendida por un cierto número de Estados la que ha facilitado la evolución del derecho del mar".

El Gobierno de México ha tomado nota con satisfacción de que el Gobierno de los Estados Unidos está estudiando ahora la naturaleza y la oportunidad de las consultas diplomáticas que deban realizarse como parte de la labor preparatoria prevista en la resolución aprobada por la Asamblea

General en relación con las dos cuestiones de fondo que dejó pendientes la Conferencia de Ginebra. La Secretaría de Relaciones Exteriores de México está, a su vez, examinando ese mismo aspecto de la labor preparatoria cuya importancia puso de relieve el Representante de México en su intervención en la 783 sesión plenaria de la Asamblea General en la que expresó entre otras cosas lo que sigue:

"Esta labor preparatoria indispensable e insoslayable, deberá consistir principalmente, en nuestra opinión, en consultas y negociaciones preliminares de carácter bilateral o regional que preparen debidamente el terreno para la eventual adopción de una fórmula general de derecho que corresponda a la práctica internacional de nuestros días y que pueda dar satisfacción a las reivindicaciones, las aspiraciones y los intereses legítimos del Estado ribereño.

"Estamos persuadidos además de que, para que tanto la labor preparatoria como la Conferencia puedan producir los resultados constructivos que fervientemente anhelamos, será preciso, por una parte, que todos los Estados llamados a participar en las labores de esa Conferencia demuestren con hechos estar animados, como lo estamos nosotros, de un deseo sincero de encontrar una solución justa y aceptable para todos a las dos delicadas cuestiones pendientes y, por otra parte, que en ningún momento se olvide que la Organización de las Naciones Unidas, bajo cuya égida se celebrará la Conferencia, está basada, según lo establece el capítulo 1o. de la Carta de San Francisco, "en el principio de la igualdad soberana de todos sus Miembros".

México, D. F., 4 de marzo de 1959.

2 Anexos.

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Desp. No. 838
From Mexico, D. F.

(Seal - Ministry of Foreign Relations, United Mexican States)

TRANSLATION

# MEMORANDUM

The debates of the Sixth Commission of the General Assembly of the United Nations during the thirteenth session with relation to topic 59 of the Program of the Assembly entitled "Question of the Convocation of a Second Conference of the United Nations on the Law of the Sea", as well as the results of the ballotings carried out at the 596th session of the Commission held December 4, 1958, on the proposals presented with regard to the mentioned topic, proved in a conclusive form that the Member States were divided into approximately two equal groups. One of these groups, which included the United States and the other ten States which sponsored the joint resolution A/C.6/L.435, proposed that the Assembly resolve to call a Second Conference on the Law of the Sea in July or August 1959; the second group formed by Mexico and the other six States, co-authors of the amendment A/C.6/L.440, proposed that before it was resolved to call a second conference, the General Assembly consider in its fourteenth session "the procedure to be adopted to obtain an agreement on the matters of the breadth of the territorial sea and the limits of fisheries, including basic examination of these matters, if it were so agreed".

Taking into consideration this divergence of opinions, it was evident that the approval of the joint resolution of the eleven countries by a bare majority of the Commission was far from constituting a good sign for the success of the proposed Conference and on the contrary would forecast that it would end in a disheartening failure.

Therefore the Mexican Delegation, convinced of the necessity of creating favorable conditions to attain a general agreement on the two matters which the Geneva Conference left pending--the breadth of the territorial sea and limits of fisheries--upon explaining its vote in the Sixth Committee emphasized the necessity that before arriving at the Plenary serious efforts be made to find a text establishing a method which would receive the unanimous approval of the Assembly. The Representative of Mexico in the Commission ended his statement in this matter with the following words: "We are convinced, in effect, as I mentioned in one of my former statements, that only in this manner shall we have formed a solid basis for our future labor tending to obtain a like unanimity with regard to the basic problem itself."

Guided by this conviction, the Mexican Delegation held several informal conversations with the Delegation of the United States, December 8-10, as a result of which an agreement was reached whereby the date fixed in the joint proposal of the eleven countries for the convocation of the Conference (July or August 1959) would be postponed to "March or April 1960". The Delegation of the United States undertook to obtain the consent of the rest

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of the co-authors of the mentioned joint proposal, and the Mexican Delegation agreed to obtain the support of the other co-sponsors of the original joint amendment, in order to present the new amendment with the same sponsorship, which was distributed as document A/L.253, and which upon being approved at the 783rd plenary session of the Assembly, December 10, made it possible for the amended proposed resolution of the Sixth Commission to be adopted at the same session, by 71 votes in its favor, no votes opposed, and 6 abstentions. The active participation of the Mexican Delegation in the informal talks which made this decision possible, were without doubt one of the most constructive contributions in the matter.

The joint amendment A/L.253 was worded as follows:

"Substitute in paragraph 2 of the dispositive part the words "in July or August 1959" by "on the earliest date in March or April 1960 which is deemed convenient".

As is seen, the text of the amendment is very clear and cannot lend itself to ambiguous interpretations. Moreover, the Mexican Representative, upon introducing the amendment formally in the name of the Mexican Delegation and in the name of all the other co-authors, explained in his address (Annex 1), also in a clear and unmistakable manner, the spirit and intention of the co-sponsor Delegations which, essentially, consists in making possible that the proposed Resolution of the Sixth Commission should be unanimously approved, and to permit the carrying out of a preparatory, conscientious labor which will create favorable conditions for the eventual adoption of a general formula of law corresponding to the international practice of our days and which will satisfy the legitimate interests of the coastal State, without forgetting for one moment that the United Nations are based on the principle of sovereign equality of all of its Members.

Although it is true that some of the 14 Representative who spoke at the 783rd plenary session, before the amendment was voted upon, referred directly or indirectly to the position or expectations of their respective Governments, it is also true that such declarations could only bind in each case the Government they represented, since in addition it is evident that they were inspired in postulates at times totally opposed, as may be seen in the paragraphs of several of these declarations, which are reproduced in the order in which they were delivered:

The Representative of Ireland:

"It has been pointed out to us, also, that we cannot assume this position in a unilateral form. Why? Nearly 30 up to this moment have accepted this position. Why assume that we would be the only ones who must wait for universal approval?"

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The Representative of the United States:

"We hope for full cooperation in the second conference and a conciliatory atmosphere during the period necessary for the advance preparations for the conference. It is to be supposed that during this period governments should not take measures which will endanger the success of the conference."

The Representative of Norway:

"In general, it is impossible for the Norwegian Government to commit itself to abstain after the year 1959, to take the necessary steps to protect its coastal population, in accordance with our concept of the existing rules of international law."

The Representative of Japan:

"My Delegation will vote in favor of this amendment in the hope that its approval will increase the possibility of success of the proposed conference. It will vote hoping that no unilateral measure will be taken before the Conference by the Member States, because the already chaotic situation regarding the breadth of the territorial sea could thereby become aggravated."

The Representative of the USSR:

"I believe that in the conditions existing by reason of the continual pressure and the use of force against that small Nordic country (Iceland) which lives almost exclusively from its fishing resources, it will not be possible to create the necessary basis to reach an agreement, which could constitute the success of the second conference on the law of the sea. Should these attempts not be discontinued there will not exist a propitious atmosphere to prepare this conference in a serious and constructive form."

The Representative of Australia:

"Nevertheless we adopt the amendment with the understanding and on the terms in which it was presented by the Mexican representative, that is, a negotiated proposal which represents important concessions from both sides of a Commission which is very divided with regard to the points embraced in the amendment."

The Representative of Tunisia:

"Therefore our delegation will vote in favor of resolution A/L.253 because this will lead us to a compromise. However, we

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would like to make it clear that our Government totally reserves its right with respect to the measures which could take into account the fundamental questions to be studied in the future conferences of the United Nations on the laws of the sea."

The foregoing recapitulation, which faithfully conforms to the facts, exactly as they took place, makes it possible to examine with a correct perspective the matter referred to in the memorandum of the Embassy of the United States in Mexico, dated December 23, 1958. What can be gathered from this recapitulation, and especially with regard to what has been said regarding the text of the joint amendment and from the statement of the Representative of Mexico in introducing it formally at the 783rd plenary session, at no time did the latter endeavor to press the States voting in favor of the amendment, the text of which was limited to a simple change of dates, to undertake the obligation either expressly or tacitly, to abstain from what the Government of the United States calls "unilateral acts", nor was there in the participation of the Delegation from Mexico any element which would permit such an interpretation.

It is advisable to remember that the Government of Mexico shares--as stated by its Representative in the Sixth Commission on November 26, 1958 (Annex 2)--the opinion expressed by the International Court of Justice in one of its decisions, in the sense that "the act of delimitation, peculiarly so, is necessarily a unilateral act, inasmuch as the coastal state is the only one that is competent to carry it out". It also agrees with the opinion expressed by the Court in the same decision that "the validity of the delimitation with respect to third States depends on international law", and it maintains in this respect that, since the codification of the breadth of territorial waters has up to the present time never been achieved in an international instrument, the only international law applicable must be that which is based on international custom derived from the practice essentially coincident, by the amount of unilateral analogous acts, of the majority of States, a custom which has created what could be called "the customary norm of international law in force in the subject matter", according to which the States possess the sovereign faculty of fixing different extensions to their respective territorial sea within the maximum limit of twelve miles.

Hence the Government of Mexico will have for the new legislation promulgated by the Government of Panama, to which reference is made in the memorandum of the Embassy of the United States, the same respect merited by all analogous measures which are dictated by other States, such as--to mention only a few of the most recent cases, those measures taken by Indonesia, Saudi Arabia, Iceland and Iraq--in the legitimate exercise of their sovereignty and in accordance with which, in the opinion of the Government of Mexico, this constitutes the norm of international law in force in this matter.

On the other hand, as far as the Government of Panama is concerned, that Government had already clearly expressed its opinion with regard to the point in question, almost a year ago, in the last plenary session of the Conference of Geneva, the twenty-first, held on April 27, 1958. Among the proposals submitted for the consideration of that session of the Conference was that presented by Australia, Canada, Ceylon and Ghana, with the abbreviated initials A/CONF.13/L.49--which did not reach the voting stage due to the opposition it provoked--whose first paragraph of resolution read as follows:

> "To recommend that all States, until the results of the postponed negotiations mentioned are known, abstain from extending the limits of its territorial waters or the limits in which they claim exclusive fishing rights."

In referring to that paragraph, the President of the Panamanian Delegation, Sr. Carlos SUCRE, expressed what in the resumé of minutes of the session mentioned above is set out as follows:

> "Referring to the proposed resolution of the four powers, he states that paragraph (a) of the operative part is unacceptable because it imposes an unjust obligation on States that were hoping that the norms of their national legislation would be consecrated by a general declaration of the Conference. His delegation cannot agree with the opinion of the representative of the United Kingdom that the liberty of action of States may prevent the reaching of an agreement on the delimitation of the zones of the sea. It is the unilateral action undertaken by a certain number of States which has facilitated the evolution of the law of the sea."

The Government of Mexico has taken note with satisfaction that the Government of the United States is now studying the kind and opportuneness of diplomatic meetings which will be held as part of the preparatory labor foreseen in the resolution approved by the General Assembly with relation to the two fundamental problems left pending by the Conference of Geneva. The Ministry of Foreign Relations of Mexico is likewise examining this same aspect of the preparatory labor, the importance of which was pointed out by the Representative of Mexico in his address at the 783rd plenary session of the General Assembly, in which he expressed among other things, the following:

> "This indispensable and unavoidable preparatory labor should consist principally, in our opinion, of preliminary consultations and negotiations of bilateral or regional character, which will properly prepare the ground for the eventual adoption of a general formula of law which will correspond to the international practice of our days and which will satisfy the claims, the aspirations and the legitimate interests of the coastal State.

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"We are convinced besides that, in order that the preparatory labor as well as the Conference may succeed in producing the constructive results which we fervently desire, it will be necessary, on one part, that all the States called to participate in the labors of that Conference will show by actions that they are animated, as we are, by a sincere desire to find a solution just and acceptable to all for the two delicate pending problems and on the other part, that at no time will they forget that the Organization of the United Nations, under whose auspices the Conference will be held, is based, according to Chapter 1 of the Charter of San Francisco, "on the principle of the sovereign equality of all its Members."

Mexico, D. F., March 4, 1959

2 Annexes.

Translation: LMRennie/RGLeddy

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From Mexico, D. F.

ANNEX 1

THIRTEENTH SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS

INTERVENTION OF THE REPRESENTATIVE FROM MEXICO,
AMBASSADOR LIC. ALFONSO GARCIA ROBLES, IN PLENARY SESSION

December 10, 1958

POINT NO. 59: Matter of the convocation of a Second Conference of the United Nations on the Law of the Sea.

I wish briefly to refer to the joint amendment A/L.253 whose co-authors have honored me by requesting that I present it formally to the Assembly.

On the occasion of my address in the general debate of the Sixth Commission on the topic that we are examining, I had the opportunity to emphasize on November 26 last that in our opinion only a draft resolution which offers probabilities of obtaining unanimous approval in the Assembly could provide solid grounds for our future labor toward obtaining a like general agreement with regard to the heart of the two vital questions which were left pending by the Conference of Geneva: the breadth of the territorial sea and the limits of fisheries.

Returning to this same aspect, upon explaining the vote of my Delegation in the Sixth Commission on Friday of last week, I again emphasized, after mentioning the disheartening results of the balloting of that evening, the necessity for all of us to find, before attending the plenary, a text which could satisfy the various opinions manifested in the Commission.

This reminder clearly shows our approval with regard to the result of the informal conversations which have taken place during the last three days between the sponsors of the original joint draft L.435 and of the joint amendment of that draft identified as L.440, our Delegation having had the privilege of actively participating in these conversations, as well as having previously been given the opportunity to participate in the preparation of the mentioned amendment.

The new amendment--A/L.253--which is the outcome of the efforts made to reach an agreement, now offered for the consideration of the Assembly under the joint auspices of the seven States that sponsored the original amendment (Chile, Ecuador, El Salvador, India, Iraq, Mexico and Venezuela), offers a conciliatory solution, which we dare hope will receive the unanimous approval of the Assembly. This compromise amendment involves a considerable amount of mutual concessions--which all those who have participated in the debates of the Sixth Commission may easily appraise--made for the purpose of obtaining a general agreement.

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Due to the brevity of the amendment and to the fact that its text is sufficiently clear, I will limit myself to making a brief commentary on the subject. The expression "on the earliest date in March or April 1960 which is considered convenient" has been used instead of simply saying "in March or April", because the date for the convening of the Eleventh Inter-American Conference which will be inaugurated at Quito, Ecuador, at the end of January or in February 1960, has not yet been definitely fixed. The terminology used in the amendment is for the purpose of avoiding that the Inter-American Conference mentioned, which is held only every five years and which is the Supreme Body of the Organization of American States, may coincide with the Conference of the Sea, which would involve serious difficulties for the representatives of the Latin American Republics. The working which has been given to the amendment signifies, therefore, only that the Secretary General, when deciding upon the date of the convocation of the Conference of the Sea, whether it is in March or Arpil 1960, after consulting all the member States of the United Nations, should bear in mind the fact which I have just mentioned.

As I have already stated, we hope that our amendment will meet with unanimous approval; we also hape that the draft resolution transmitted by the Sixth Commission, once it is amended, will be unanimously adopted. Naturally when this hope has been fulfilled it will only serve as a stimulus to prepare us to carry out with tenacity and perseverance a conscientious preparatory labor which, as already stated in the last paragraph of the preamble of the draft resolution--a paragraph which was added thanks to our original amendment in the Commission--will be a primary factor which will enable us "to insure reasonable probabilities of success" of the future International Conference of Plenipotentiaries on the Law of the Sea.

This indispensable and unavoidable preparatory labor should consist principally, in our opinion, in consultations and preliminary negotiations of bilateral or regional character, which will duly prepare the ground for the eventual adoption of a general formula of law which will correspond to the international practice of our days and which can satisfy the claims, the aspirations and the legitimate interests of the coastal State.

We are convinced besides that in order that the preparatory labor as well as the Conference may produce the constructive results we fervently hope for, it will be necessary on one hand, for all the States called to participate in the labors of that Conference to show by actions that they are animated, as we are, with a sincere desire to find a solution just and acceptable for all to the two delicate pending questions and, on the other hand, that not at any moment should it be forgotten that the Organization of the United Nations under whose sponsorship the Conference will be held, is based, according to Chapter 1 of the Charter of San Francisco, "on the principle of sovereign equality of all of its Members".

Translation: LMRennie/RGLeddy

(Classification)

Desp. No. 838
From Mexico, D. F.

# ANNEX 2

**PARAGRAPHS OF THE ADDRESS OF THE REPRESENTATIVE OF MEXICO, IN THE SIXTH COMMISSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS, NOVEMBER 26, 1958, IN THE GENERAL DEBATE RELATIVE TO THE TOPIC "MATTER OF THE CONVOCATION FOR A SECOND CONFERENCE OF THE UNITED NATIONS ON THE LAW OF THE SEA".**

The Delegation which represented Mexico in the recent Conference of the United Nations on the Law of the Sea, in which I had the honor to take part, attended that international meeting with the firm conviction that in order to attain constructive results, it was necessary, above all, to have an objective knowledge of the practice and existing conditions on the subject, the codification of which was being attempted.

For that reason, since my first intervention in the general debate of the First Commission of the Conference, in which I carried the representation of my country, I had the occasion to express on March 19, 1958, the following:

> "We believe that the first thing that should be done, so that our labors will be fruitful and the conclusions at which we arrive will be acceptable to all, is to clarify the situation existing at present regarding the limits of the territorial waters and the breadth of these waters which the Governments represented in the Conference consider to be the one corresponding to the necessities of their respective countries; at present, I repeat, not the situation which existed more or less in the past, nor the situation which may possibly exist in the year 2000."

For that reason also a few days before the Conference my Delegation proposed to the First Commission, and had the satisfaction of having this Commission adopt a resolution setting forth that the Secretariat be entrusted with the preparation of a "synoptic picture of the requirements of the existing laws and regulations in the States represented at the Conference, concerning the breadth and juridical rule of the zones of the sea adjacent to its coasts, and of the claims which on the same subject the Governments of those States may have officially formulated, prior to the date of the inauguration of the Conference"...

The synoptic picture points out to us the road for the solution of problems left pending at the Conference of Geneva. The law, as many prominent jurists have repeatedly said, is a rule of life and, in consequence, in order that it may be respected and may render beneficial results, must take into account the existing living conditions. Law must be adapted to life and not vice versa. In the case before us, the progressive development of international law and its codification, cannot tend to create anachronous molds which correspond only to fixed minority interests and which are intended subsequently and by force to make existing international laws conform to them;

but rather they should try to clarify, above all, the rules in force in existing national laws in order to formulate the international norm which may be the common denominator of said rules.

Consequently, when the opportune moment arises again to examine the problem of finding a formula which will judicially define the breadth of territorial waters, it will be necessary to make it possible for that formula, as I have pointed out several times at Geneva, faithfully to reflect what could be called the common norm of international law in force in the subject matter, which, as pointed out by the legislation and practice of the world's coastal States, and as explained since 1956 before the International Commission of Law by the Mexican member of that Commission, Dr. Padilla Nervo, is a norm of changeable contents. The formula, in consequence, should be such that it will limit itself to recognizing contractually that which, based on international practice, may be affirmed that it is already a common law of States, that is, the sovereign faculty of these States to fix different extensions to their respective territorial waters within certain reasonable maximum limits.

With respect to this customary international norm, which is without doubt the most important factor which must be taken into account for the codification of the breadth of the territorial sea, I do not wish to continue without stopping briefly to analyze--in order to demonstrate the absence of all fundamental and judicial logic, the principal argument adduced up to the present in the debates of this Commission by some of the representatives who . . . have adopted the tactics of attacking, as worthless in international law, all governmental decision which fixes breadth greater than three miles.

We have been told repeatedly by those representatives that the decisions to which I have just referred, whether these are in the form of laws, decrees or regulations, should be considered as "unilateral acts" of internal character, completely lacking judicial international efficacy. To support this statement, there is generally adduced a paragraph of the decision relative to the fisheries dispute between the United Kingdom and Norway dictated by the International Court of Justice in 1951.

The Mexican Delegation shares--as I stated emphatically at Geneva on March 19--the opinion set forth by the Court in that decision, in the sense that the limitation of the maritime zones and therefore of the territorial waters, has not only an internal aspect but also an international aspect. To put it in the words of the decision itself, "If it is indeed true that the act of delimitation properly such is necessarily a unilateral act, since the State with coastal waters is the only one competent to perform it; on the other hand the validity of the delimitation with respect to the third States depends on international law". My Delegation, however, believes that the paragraph which I have just quoted, far from serving as a basis of

the thesis sustained by those who have invoked it, totally nullifies in itself the mentioned thesis. Let us further examine its text to prove it. "The validity," says the decision, "of the delimitation with regard to the third States depends on international law". The key words are without doubt "international law", and it is evident also that upon so speaking the Court intended to signify international law of today and not international law of the times of Bynkershoek.

Now, what are we told about the breadth of the territorial waters by the two principal sources of positive international law, treaties and international custom?

With regard to the first, not only has it been impossible to incorporate any disposition in this respect in the recent conversations at Geneva, but, as it is well known, up to the present it has not been possible to codify the breadth of the territorial waters in an international instrument.

There remains to illuminate us on this matter only the second source of the law of peoples, to which I referred to previously; international custom drawn from the essentially coincident practice, for the amount of unilateral analogous acts, of the majority of the States. This and no other, in the absence of any contractual instrument, was the only judicial basis, at the end of the XIX century and in the beginning of the present century for the defunct "rule of three miles" which on the other hand, it may be worth while remembering, was never generally observed because, among others, neither the Scandinavian States, nor the States of the Mediterranean, nor Russia, nor various Latin American Republics ever accepted it.

In spite of that lack of absolute uniformity, we believe that we are right in affirming that the invocation of the "rule of three miles" at the time of its most extensive practice, say in the year 1899, could be considered justified in law in the light of international practice.

But that period passed half a century ago. We are now living in 1958, when the famous rule has expired, expressly repudiated by an immense majority of States. By the light of practice and the existing international circumstances, the same judicial basis would exist today for invoking the "rule of three miles" as to invoke the "rule of one hundred miles or two days of travel" which, as is known, was formulated in the XIV century by Bartholomew of Saxoferrato and which, as pointed out by Raestad, was accepted by practically all of the jurists of the XV century.

No. It is not, as I have said, the practice of epochs more or less past which should interest us and which can give judicial value to an international norm. The only one that interests us and the only one that can be of service to us as a source of positive contemporaneous international law, is the practice of our days, the practice of the second half of the XX century in which we live.

Which is that practice? I will limit myself, to answer that question, to recall that the Commission of International Law of the United Nations in its Eighth Report to the Assembly which served as a basis for the labors of Geneva, declared that: "The Commission considers that the international law does not authorize the extension of the territorial waters beyond twelve miles". This affirmation of the Commission and the judicial element that, like it or not, is forcibly implicit, should be interpreted in the light of the official data subsequently compiled in the synoptic study prepared by the Secretariat and which (I have already mentioned it, but it is worth while repeating) proves in an irrefutable form, that more than two thirds of the coastal States of the world have fixed the breadth of their territorial waters at more than three miles, although not exceeding in the majority of the cases, the breadth of twelve miles. That should be considered, therefore, the common norm of international law in effect in the matter, the only existing law, as we know that no contractual international norm exists in this respect, and the only one that can be adopted, therefore, to judge international validity of the delimitation of territorial waters to which the Court referred in its decision of 1951. That one, and no other, must be the "international law" on which, as the decision affirms, said validity depends with respect to third States.

We hope that it will be seriously considered, and with the objectivity which should constitute one of the essential qualities of the jurist on the matter which I have just explained, and perhaps, as a consequence, we will not be told again at the Commission about "unilateral acts" lacking international effects nor of pretended violations of international law.

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