though the Russians have actually tried to a large extent to argue their condemnation of the instant United States action in orthodox legal terms. With the non-legalistic attitude there must be a large degree of sympathy or comprehension both from a sociological viewpoint and especially in view of the present (sic) state of international law. Such an attitude cannot, however, in view of all considerations, both logical and practical, be pushed to the point of repudiating legalistic technique entirely or abandoning any attempt to treat such cases, including the present case, according to accepted legal standards. According to such standards the Beirut landing can clearly be justified, although the two broader aspects of the situation already mentioned cannot be forgotten.

PITMAN B. POTTER

THE GENEVA CONFERENCE ON THE LAW OF THE SEA; A STUDY IN INTERNATIONAL LAW-MAKING

Elsewhere in this issue the Geneva Conference on the Law of the Sea is fully described, and it is unnecessary here to repeat the facts which have been stated by Mr. Arthur H. Dean and Miss Marjorie M. Whiteman.[1] This comment concerns itself with the methods and procedures which were utilized in what was distinctly an exercise in international law-making.

The law of the sea is one of the oldest branches of international law. Seafaring peoples have from the earliest days known the utility of rules or common practices, just as much as they have spawned marauders and pirates. Much of the law of the sea which is applied commonly in the courts of many countries today is not "international law" in the sense in which that term is employed by those concerned with public international law. But the Supreme Court of the United States has found in maritime law a focus for a continued assertion of the existence of a customary law which has developed outside of any one national jurisdiction. In this field it is content to find that there is law and it does not feel compelled to assert that the matter is "political" in the sense that, under the separation-of-powers doctrine, the matter lies within the functions of the executive or legislative branches of the Government. On the other hand, there is much maritime law which is distinctively "public international law" whether one considers the type of jurisdictional problem raised in the *Lotus* case, or whether one refers to the right of innocent passage, the immunities flowing from entry in distress, or the more modern doctrines concerning the exploitation of the continental shelf.

There have been many attempts to make the law of the sea more precise. Leaving aside that abundant source of law which for centuries determined the respective rights of belligerents and neutrals and which was regularly and generally impartially applied by national prize courts, one recalls that international jurisprudence has played a distinctive part: *The Costa Rica Packet, The Bering Sea* and *North Atlantic Coast Fisheries Arbitrations, The I'm Alone,* the *Norwegian Fisheries Case,* for example. Treaties on

[1] See above, pp. 607, 629.

https://doi.org/10.2307/2195593 Published online by Cambridge University Press

the subject, bilateral, regional and multilateral, are numerous and many of them have regulated in very practical ways the acute problems which confront seafaring men. The law of the sea, with skillful guidance from those closely concerned, has developed also through the adoption of uniform national laws, and through the customary utilization of common documents and practices.

The efforts of the League of Nations to contribute to the "codification" of international law included abortive attempts in 1930 at agreed statements on the law of territorial waters. Undaunted, the International Law Commission of the United Nations addressed itself to the statement or restatement of the law of the sea. The work began in 1949 when, at its first session, the International Law Commission included the "Regime of the High Seas" among the subjects to which it should give priority. In 1950 the General Assembly recommended work also on territorial waters, to which the Commission forthwith addressed itself in 1951. The *Rapporteur* for both topics was the Netherlands jurist, Professor J. P. A. François. The work continued with submission of drafts to governments and consideration of governmental replies, until in February, 1958, responding to the Commission's initiative, the United Nations Conference on the Law of the Sea, convened by resolution of the General Assembly, began its nine-weeks' session with eighty-six countries in attendance.

The national delegations included experts not only on law but also on technical fishery problems and on geography and oceanography and comparable sciences. In contrast to the League Codification Conference of 1930, one gets from the outside the impression that this was a conference ready and able to address itself to the practical maritime problems which confront the world seafaring community (and indeed even the vigorous bloc of landlocked states which was in attendance).

It is certainly not surprising that agreement was not reached on all problems; the measure and extent of agreement was surprising. The International Law Commission should be gratified to recall that its draft proposals were generally the basis of discussion and in many instances were adopted either without changes or with minor ones. A rather superficial examination of the voting suggests that there was no uniformity in the line-ups. States voted together on some articles and opposed each other on others. The natural implication is that the voting in general was not political in the sense of reflecting the traditional separation of the Soviet bloc from the rest of the world—though instances of this situation are to be found. There were clear divergencies of view—reflected in votes—as between the United States and the United Kingdom and as between Canada on the one hand and the United States and the United Kingdom on the other. The voting in these instances seems to have followed national interests as interpreted by the governments which instructed the delegations and which were no doubt in some instance influenced by the economic (fishing) interest of influential groups of their nationals. Other types of national interests no doubt also affected the votes on such matters as the articles adopted regarding the use of flags of convenience.

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The Conference adopted five conventions and nine resolutions.[2] At the Conference and in some of the comments on its proceedings, importance seems to have been attached to the size of the votes on various drafts in the committees and even in the plenary sessions of the Conference itself. It would seem to be true, however, that the size of the vote on any particular proposition is relatively immaterial, the interesting question being whether the principal or very important maritime states were voting with the majority or the minority. Of course no one would have ignored the fact that the action of the Conference did not "make" international law—or did it? If the International Court of Justice, for example, were now called upon to rule specifically upon the extent of territorial waters off an uncomplicated coastline, would it deduce from the records of the Conference that there was no international law of the subject? Or would it conclude that, since there was no agreement upon stating an extent greater than three miles, this traditional limit still stands as that established by international law in the absence of particular agreement or special geographical factors? Is a conference resolution on fishery conservation, adopted by unanimity but concluding merely with a recommendation, of less jural consequence than a convention adopted by majority vote of the conference and subsequently ratified by x number of states? Is it not important to see which states are included among those which actually become parties to the conventions?

Naturally one looks at the language of the various conventions. One notes, for example, that the Convention on the Territorial Sea and Contiguous Zone and the Convention on the Continental Shelf begin with the simple statement that "The States Parties to this Convention have agreed as follows:", whereas the Convention on the High Seas declares that "The States Parties to this Convention, Desiring to codify the rules of international law relating to the high seas, Recognizing that the United Nations Conference on the Law of the Sea . . . adopted the following provisions as generally declaratory of established principles of international law, Have agreed as follows:". The difference is certainly significant. The Convention on Fishing and Conservation of the Living Resources of the High Seas is clearly drafted in terms of a legislative (albeit by agreement) act recognizing need and then adopting measures to meet the need. The Optional Protocol of Signature Concerning the Compulsory Settlement of Disputes is also clearly of another nature entirely.

The debates in the Conference would naturally contribute further evidence of what states consider to be "a general practice accepted as law." Thus the statement by Mr. Dean for the Delegation of the United States[3] on the closing day of the Conference clearly distinguished between the assertion of the United States that the three-mile rule is the existing international law, and the compromise suggestions advanced by the United States with a view to reaching general agreement on the subject.

[2] U.N. Docs. A/CONF. 13/L.52–57, printed in 38 Dept. of State Bulletin 1111 ff., and below, at p. 834.

[3] Dept. of State Bulletin, *loc. cit.* 1110.

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If the drafts prepared by the International Law Commission continue to serve as bases of discussion at practical international conferences, and if they are frankly drafted for that purpose, it is quite possible that significant progress can be made along many lines through the same type of procedure as that followed at the Geneva Conference on the Law of the Sea. But the proof of this pudding is in the ratifications of the several conventions and in the implementation of the recommendations.

PHILIP C. JESSUP

THE GENEVA CONVENTION ON THE CONTINENTAL SHELF: A FIRST IMPRESSION

The Convention on the Continental Shelf, adopted at Geneva on April 26, 1958, by the United Nations Conference on the Law of the Sea, represents the first great effort to determine by an act of international legislation the scope of the continental shelf doctrine in international law.[1] The fact that the Convention was finally approved by a vote of 57 to three, with only eight abstentions, is evidence both that a need for rules on the subject was generally felt and that the rules embodied in the Convention were considered on the whole acceptable. In view of the wide disagreement at the Conference on other aspects of the law of the sea, this consensus regarding the shelf is not a negligible achievement. The Convention is not law, of course, and according to its terms will not be binding even on the parties until 22 ratifications or accessions have been received; but it is in any case highly significant as an agreed statement of principles.

The Convention itself reflects in general a moderate approach, and this also is an achievement in which its framers may take satisfaction. Extravagant claims of the kind which in recent years have threatened to reduce the shelf doctrine to absurdity will gain from it little support. It notably rejects the view that the doctrine justifies claims to vast offshore areas regardless of depth or exploitability, or that it entitles a coastal state to exercise unlimited jurisdiction over the waters above the shelf. On the contrary, the general principle is explicitly affirmed that the shelf doctrine does not affect the established legal order of the high seas. Nevertheless, despite these substantial merits, the Convention cannot be regarded as a wholly satisfactory instrument. It is quite good, but not quite good enough. It leaves many serious uncertainties unresolved, more perhaps than should be permitted to pass even in a first attempt. This does not mean that it should be repudiated, but rather that its inadequacies should be promptly recognized for what they are. Some, no doubt, can be the objects of later improvement; others, it must be feared, are now irreparable and must be viewed as part of the price paid for any agreement at all.

The Convention as a whole closely follows the draft articles on the

[1] The final text of the Convention appears in U.N. Doc. A/CONF.13/L.58 (the Final Act of the Conference), and also separately in Doc. A/CONF.13/L.55, printed below, p. 858. It consists of versions in English, French, Russian, Chinese, and Spanish, each version being declared equally authentic. See article by Marjorie M. Whiteman, above, p. 629, for full documentation on the Conference discussion of the subject.

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