Third United Nations Conference on the Law of the Sea

1973-1982
Concluded at Montego Bay, Jamaica on 10 December 1982

Document:-
A/CONF.62/SR.34

Summary Records of Plenary Meetings
34th plenary meeting

Extract from the *Official Records of the Third United Nations Conference on the Law of the Sea, Volume I (Summary Records of Plenary Meetings of the First and Second Sessions, and of Meetings of the General Committee, Second Session)*

Copyright © United Nations
2009

oping countries, and all such countries had a right to be anxious.

67. Not only had the Soviet Union been against the organization of the present Conference, but it had, in its statements, threatened the sovereignty of coastal States and advocated free shipping and access to territorial waters in order to despoil other nations and impose its will on them. Its intentions could not be concealed and showed that the Soviet Union was a revisionist and chauvinist super-Power.

68. The PRESIDENT said that although questions relating to the law of the sea inevitably had political overtones, he wished again to appeal to delegations to exercise restraint in their statements.

The meeting rose at 1.30 p.m.

28th meeting

Wednesday, 3 July 1974, at 3.40 p.m.

President: Mr. H. S. AMERASINGHE (Sri Lanka).

General statements (*continued*)

1. Mr. PINTO (Sri Lanka) said that his Government had already indicated its position on the law of the sea in various bodies concerned with the sea-bed. Consequently, he wished to deal with the question that he considered to be of the highest importance—the exclusive economic zone and, in particular, an exclusive fishery zone, which should be the subject of recognition and codification at the current session of the Conference.

2. In the opinion of his delegation, a State had sovereignty for the purpose of exploiting the available living, non-living, renewable and non-renewable resources of the exclusive economic zone. That meant that all the resources of the zone actually belonged to the coastal State, which was the only State that could take action to conserve and manage them. If the coastal State was unable, because of a lack of technological and financial capacity, to exploit the resources of the zone, it would be open to the coastal State to enter into arrangements with other Governments and entities to exploit the resources so as to generate the maximum possible benefit. The coastal State did not therefore have merely a preferential right to those resources. If that were so, the right of the coastal State would be limited to only those resources that were exploitable. Recognition of the exclusive economic zone would not only protect existing investments but would also offer new incentives for development of the fishing industry by guaranteeing that the Government would have the right to take action to conserve the resources and to control competition. A distinction had to be made between renewable resources, consisting of fish stocks that would be wasted if they were not harvested systematically, and non-renewable resources, consisting of minerals that could remain untapped indefinitely. Consequently, it was to be foreseen that the coastal State would adopt different approaches to the exploitation of the two types of resource.

3. As far as the exclusive fishery zone was concerned, it was essential to recognize that all species of fish in the zone were to be treated as belonging to the coastal State and subject to its exclusive right of exploitation. Nevertheless, in view of the biological characteristics of those resources, the coastal State would recognize that when the fish passed out of its national jurisdiction or into the jurisdiction of another State, the coastal State would lose its exclusive rights to them, and, in view of the mobility of the resource, the coastal State should exploit it with due regard to the interests of the international community and, in particular, of neighbouring States. That would not apply, of course, to such species as anadromous fish, for which special provision would be needed.

4. As to the operation of an exclusive fishery zone, his country was particularly interested in conservation and management on the one hand, and arrangements for full utilization on the other. As far as conservation and management of the zone were concerned, the coastal State should have exclusive jurisdiction for formulating and implementing regulatory measures which, of course, must be based on sound scientific data. The gathering of that data would not present any problems when the data referred to fish stocks whose life cycles were completed within the zone of the coastal State. Nevertheless, in the case of species that migrated from the zone or into the exclusive economic zone of another State, co-operation between all the States concerned might be necessary. Such co-operation would also be necessary to agree on arrangements designed to maintain fish stocks at an optimum level throughout their entire migratory range. Such arrangements might be bilateral or multilateral, depending on the case, or based on the use of a permanent intergovernmental machinery such as the regional commissions of the Food and Agriculture Organization of the United Nations (FAO) when a more regular operation was required. It would of course be necessary to modify the existing statutes or agreements to take into account the recognition of the exclusive fishery zone. He drew attention to the fact that the FAO Fishery Committee for the Eastern Central Atlantic had established two Sub-Committees to deal with fishery management. One of the Sub-Committees, the membership of which was limited to coastal States, was concerned with resources of areas within national jurisdiction; the other, made up of coastal States and distant water fishing nations, was concerned with resources beyond national jurisdiction and matters relating to action affecting other areas. In addition, three of FAO's regional fishery commissions—in the Indian Ocean, in the South China Sea and off the West African coast—were already providing assistance from funds made available by the United Nations Development Programme and certain donor countries.

5. As far as the arrangements for full exploitation of the exclusive zone were concerned, it had been argued that its operation would lead to a closure of access to stocks in large areas of coastal waters and a consequent under-utilization and waste of protein resources. His Government believed that such a result was most unlikely to occur. The central objective of an exclusive fishery zone was to give the coastal State possession of a resource from which direct benefits could be realized immediately. Consequently, the coastal State would be the first one to be interested in exploiting those resources. Such exploitation could take place not only through the levy of charges under a licensing system but also, for example, by the transfer of technology, including the training of personnel. Another, more promising, arrangement during the transitional period prior to the attainment by the coastal State of the requisite level of technology and financial capacity was what had been called "joint ventures", which might be either contractual or involve equity participation and the setting up of a separate legal entity.

6. It was the exclusive right of coastal States to determine the allowable catch and the allocation of quotas to foreign

fishermen. In that respect it was to be hoped that the coastal States would take duly into account the recommendations of such appropriate intergovernmental organizations as the FAO regional commissions. Of course, the question of payments and other benefits to which the coastal State was entitled should be subject to negotiations between the coastal State and the foreign fishermen concerned.

7. The Government of Sri Lanka was convinced that the legal and political questions affecting land-locked or geographically disadvantaged countries had to be settled, taking into account their needs and interests. In that way, it would be possible to define the term "geographically disadvantaged State", or if that proved impracticable, at least to list the States which fell into that category. It might also be useful to determine whether some of those States were more disadvantaged than others and therefore entitled to preferential treatment. At the same time, it might be possible to clarify the meaning of the term "transit State" in order to determine, for example, if all countries located between a land-locked State and the sea were to be considered transit States, independently of the problems posed by possible routes, or if it remained at the option of the land-locked State to choose one or more States as transit States, and to impose the corresponding obligations upon them. Another point that should be determined was whether there was an objective criterion which could be used to define the status of transit States and, once the role of transit State had been determined and accepted, whether the land-locked State would then lose its right to attempt to establish an alternative route through another State.

8. It had often been maintained that at least the nationals of developing land-locked countries should have the right to exploit the resources of the exclusive economic zone of coastal States. It should be determined whether that right was to be exercised in the exclusive zone of all coastal States or only of those of "neighbouring" coastal States, and in the latter case, what criterion should be used to determine the "neighbouring" character of one or more coastal States. It had also been affirmed that a geographically disadvantaged country should have "equal rights with other States and without discrimination", in relation to resources found in an exclusive economic zone. That proposition might be acceptable if it were taken to mean equal treatment among the nationals of all foreign countries within an exclusive economic zone. If equality of treatment were, however, to embrace even the nationals of the coastal State, problems might arise, which could be solved only if the essential interests of the geographically disadvantaged countries, on the one hand, and the States with exclusive economic zones, on the other, were taken into account.

9. Sri Lanka hoped that the Conference would not lose sight of its special responsibility to represent the 3,000 million people whose desires and aspirations had to be taken into account. His delegation undertook to do its utmost, in collaboration with the other delegations, to ensure that the Conference produced a law of the sea to which there was universal agreement.

10. Mr. VAZQUEZ CARRIZOSA (Colombia) stated that the Conference's work could be divided into three areas: first, there was the revision of the 1958 Geneva Conventions on the law of the sea in order to bring them up to date; secondly, there were the adoption of new norms for the conservation of the marine environment, the regulation of fishing, the situation of the archipelagic States, the land-locked States, the régime of straits, and procedures for the settlement of disputes. Lastly, there was the establishment of an international régime for administering the sea-bed and the ocean floor, considered as the "common heritage of mankind".

11. The central theme of the Conference was international justice and, more specifically, economic justice applied to relations among States on the seas and the oceans, now that the process of decolonization was also being applied to the law of the sea.

12. Reviewing the history of the law of the sea, he stated that multilateral participation within a universal community had come about as a consequence of political and economic changes in the post-war world. The era of world conferences cautiously opened by the League of Nations had become a reality under the auspices of the United Nations.

13. The four international Conventions adopted at the first United Nations Conference on the Law of the Sea in 1958 constituted the first codification of international legal principles on the law of the sea resulting from multilateral co-operation, and they constituted the basis of an international positive law that was binding on all States. However, the 1958 Conventions had a number of gaps, or had been superseded by events that had occurred after the Geneva Conference. Among those gaps, the most obvious was the lack of any means of extending the territorial sea, and the contiguous zone would undoubtedly be superseded by the idea of the patrimonial sea. Above all, those Conventions embodied the most serious injustice for the poor countries, since the notions of the high seas and freedom of fishing seemed designed to permit the big dominating Powers to extract the wealth that was to be found close to the coast. Together with a few universal principles, those Conventions defined the true legal system governing the continental shelf, which was perhaps the only original contribution to the law of the sea made in 1958.

14. The four 1958 Conventions were indicative of a transition period between an era when the only regulation of the seas was connected with their use for navigation, and a new era when the riches of the sea-bed and the subsoil thereof were being explored and exploited. On the other hand, they did not embody all the conclusions which contemporary States had drawn from the two proclamations made by President Truman in 1945, in the wake of which the classic law of the sea had been only partially revised, as the unrestricted freedom of fishing had remained untouched, and the wealth of developing States was considered to be in the common domain. Since that time, the legal process of revision by which the old law of the sea would be superseded had been under way, and there was no stopping it.

15. The legal liability of merchant ships on the high seas was another topic requiring revision of the classic norms in order to prevent abuse of the law and irreparable damage to the marine environment. Man's neglect of the oceans as a source of life and energy contrasted sharply with the concern of scientists for the biosphere.

16. Within that historical perspective, the Latin Americans and the developing countries in general were seeking a new law of the sea which would serve primarily economic purposes but would at the same time be capable of meeting the requirements of conservation of the living resources of the sea and the marine environment. In Colombia's view, the economy and the ecology of the seas were the two essential goals to be considered by the Conference at Caracas.

17. Colombia wished to state once again that the principles and rules of the law of the sea should be the result of careful deliberations by an organized international community which would save States from the danger of anarchy in international maritime laws. It prided itself on its strict adherence to international law, and in drawing all its frontiers it had proceeded accordingly.

18. Colombia distinguished between the territorial sea properly so called, with all its traditional attributes of sovereignty, the extent of which it felt should be 12 nautical miles, following the trend towards a universal consensus, and an economic zone which would extend to a distance of 200 nautical miles, taking into account geographical circumstances or existing treaties, in which the coastal State would enjoy full sovereignty over the resources existing in that zone. It thought that the proposed patrimonial sea or economic zone, which already had the support of many delegations, would be the most appropriate solu-

tion to a difficult problem involving the interests of the coastal State and the rights of the international community. That formula, put forward jointly with Mexico and Venezuela (A/9021 and Corr. 1 and 3, vol. III, sect. 9) combined the advantages of the boldness needed to face the question of the future exploitation of the riches of the sea by the coastal State to a distance of 200 miles without impeding the freedom of navigation required by the international community and a margin of flexibility to adapt that broad zone to the circumstances of seas such as the Caribbean, which were crowded with islands and where it was difficult for one State to avoid having to define the limits of its rights in relation to those of another State.

19. In any case, it was essential to give definitive legal form to the limit of 200 nautical miles, which was already a fact but which had not yet become a right in international law. In Latin America and other parts of the world the 200-mile limit had an almost mystical political aspect which was identified with the national aspirations of many States and it was also a necessity, owing to well-known biological and oceanic circumstances.

20. It was essential to advance from the stage of international law at which each member of the international community took the law into its own hands to another which would be more in keeping with universal criteria and with the law of nations, while still taking into consideration regional and local circumstances. There was an irreversible trend on the part of States to put an end to their economic independence and bring under their national sovereignty the greatest possible quantity of marine resources because of the possibility that land-based resources would be exhausted.

21. The patrimonial sea proposal was entirely in keeping with the concept of an international community and would make it possible to reach early agreement concerning the just aspirations of most States to have a 200-mile limit and the very understandable desire of all that freedom of navigation should be maintained. In the situation created by the economic necessities of the age, Colombia suggested a new name and a new institution. International law should prevail over the decisions of States and to that end it was essential to give serious thought to reaffirming the principle of the competence of an international jurisdiction to settle differences concerning the application of the rules of the sea. Accordingly, Colombia felt that article 26 of the Statute of the International Court of Justice should be genuinely put into effect.

22. Furthermore, the new law of the sea could not be understood as a body of rules unrelated to the non-legal aspects of the sea, such as the conservation, defence and preservation of the living resources of the sea and the marine environment. In Colombia's view, an international authority should be set up to deal with that scientific aspect on a world scale.

23. Colombia fully supported the establishment of an international authority to administer the sea-bed and ocean floor beyond the limits of national jurisdiction, in accordance with the principle of the waters constituting the "common heritage of mankind". However, the difficulty of applying that principle lay in the delimitation of the frontier dividing the continental shelves of the various countries from the ocean floor. The tracing of that frontier required a complex study of the geological conformation of the seas and of the limits which States would be willing to see imposed on their own possibilities for exploiting the sea-bed.

24. By the year 2000 the peoples of the world would be faced with an enormous task of survival. The energy of the seas could replace that from land-based sources, and minerals from the ocean floor could take the place of those currently extracted from mines.

25. The sea was no longer a mere navigation route, it was the last phase of man's expansion on the earth. Colombia hoped that the Conference would reach an agreement reflecting the contribution of all countries and it offered its full co-operation to that end.

Mr. Trepczyński (Poland), Vice-President, took the Chair.

26. Mr. MEDEIROS QUEREJAZU (Bolivia) said that the position of Bolivia, a land-locked country, with regard to the law of the sea could be summarized in two basic points, covered by General Assembly resolution 2749 (XXV): free access to and from the sea and participation in the exploitation of the resources of the sea which were to be found beyond the limits of the territorial sea. The concept of free access to and from the sea consisted in turn of the right of free transit, unrestricted, continuous and without discrimination, through the countries situated between the sea and a land-locked country, the right of free navigation of vessels flying the flag of a land-locked State, and equality of treatment in the ports of coastal States. Those attributes had been formally recognized in the Convention on the High Seas, concluded at Geneva in 1958,[1] and it was necessary to regulate them now in breadth and in detail in the convention on the law of the sea, in order not only to give them a multinational character and increased application but also to ensure their full realization and effectiveness.

27. In addition, it was essential to bear in mind the close relationship between the geographic situation of a country and the planning of its economic and social development, an aspect which had been recognized in General Assembly resolutions 1028 (XI) and 2626 (XXV) and which had its origin in the material and legal limitations to which land-locked States were subject when taking decisions concerning such basic questions as planning their infrastructure, organizing transport services, and trade, on the one hand, and on the other, the limitation constituted by the attitude of the coastal States which, on the basis of unilateral declarations on the breadth of the territorial sea, international legislation on the continental shelf and the new concept of the patrimonial sea, were actually extending their domination over the natural resources of the ocean floor, including those in the superjacent waters.

28. In any case Bolivia, like other land-locked countries, shared the view that the developing coastal States had legal and economic reasons which justified the extension of the territorial sea, provided it did not exceed 12 nautical miles, and the establishment of intermediate areas of jurisdiction up to a maximum of 200 miles for the exploitation and conservation of natural resources. However, just as it acknowledged that right, Bolivia called for the granting to land-locked countries of fair, and in some cases preferential, participation in the use of those resources, since any extension of State sovereignty or State jurisdiction, involving as it did the appropriation of part of the *res communis* of the sea, should at the same time make it incumbent on the beneficiary States to compensate the other members of the organized international community, in particular land-locked States which, owing to their geographical position, lacked the capacity to expand. The Third Conference should formulate legal rules embodying those compensation obligations and translating them into practical economic terms. It might be advisable for the rules to be formulated in the context of regional or subregional agreements; but in any case the convention on the law of the sea should establish the division of responsibilities and the normative content of such agreements. In addition, it was essential to provide effective machinery for the solution of disputes, either in a special form or as part of the common régime of the sea-bed and the ocean floor beyond the limits of national jurisdiction. In addition to the question of land-locked countries, consideration should also be given to the special position of certain States which, while having independent access to the sea, were limited by adverse geographical factors, such as narrow or enclosed continental shelves, or short coastlines, and which should also participate in the use of the zone of exclusive economic jurisdiction.

29. His delegation thought that it was not enough for the Conference to define the international area of the sea-bed and

[1] United Nations, *Treaty Series*, vol. 450, p. 82.

ocean floor and its legal status; it was essential also to organize an administrative and economic régime in which interests and responsibilities would be shared by all States without distinction under the terms of paragraph 9 of General Assembly resolution 2749 (XXV). Land-locked countries were seeking representation in the Authority which would administer the area, participation in the benefits of its development, and the opportunity to contribute effectively to the implementation of the principle that the sea-bed and the ocean floor were the common heritage of mankind.

30. Bolivia's position with regard to the rules of the new law of the sea stemmed from its special features as a land-locked country. Bolivia was in a disadvantaged geographical situation as the result of a historical injustice, in that less than 100 years earlier it had lost its Pacific coastline as the result of a war. In addition, Bolivia lacked any river outlet to the Pacific Ocean, and the rivers linking it to the Atlantic were not always navigable, so that all its commercial traffic had to go by land. Lastly, it was precisely because of its lack of free access to the sea that Bolivia had been classified as one of the relatively less developed countries.

31. The problem should be resolved by diplomatic negotiations, economic agreements and international co-operation and, as had been shown in the Andean Pact and the Organization of American States, there was already in the Americas a clear recognition of the fact that economic integration and political solidarity could not achieve their objectives unless effective solutions were first reached on questions such as the land-locked situation of Bolivia. He hoped that in future such recognition would be reflected in a determination to act, from which in turn would emerge a world based on human understanding and solidarity.

32. Mr. RAHARIJAONA (Madagascar) said that he would confine himself to a short general introduction, but reserved the right to state the position of the Government of Madagascar with regard to the Conference on a future occasion.

33. In the opinion of his delegation the two basic principles of the law of the sea were that that law should be, first, a law of economic development and, secondly, a law of State sovereignty. It was recognized that a legal rule could be an instrument in the service of the economy, inasmuch as it translated economic realities into positive law; in that context, it could be seen that the classical law of the sea was already an instrument of economic development reflecting the interests of the maritime Powers which had conceived it.

34. However, precisely because the contemporary world was not the same as the world of 1958 and 1960 and the third world, having had no part in the process of codification which had taken place in those years, wished to participate fully in formulating a law of genuine economic development, the Conference should re-examine the existing rules, and call in question, in a constructive rather than a destructive spirit, the traditional law of the sea in order to decide, first, whether there actually was a law of the sea to which general consent had been given and which was in fact applied, and how effective the rules of the four Geneva Conventions had been; secondly, whether the existing rules of the law of the sea were not in essence the results of a static codification of use, customs and rules generally accepted at a given moment in the history of the great maritime Powers; and thirdly, whether the mere presence of representatives of a number of nations which for historical reasons had not participated in the codification of the law of the sea did not justify a reconsideration of the aims of that law. Some principles of law were not sacrosanct but could well be modified. In that connexion, it should be emphasized that the innovative proposals made by the Latin American States 16 years earlier, which at that time had either been treated as ludicrous or aroused indignation, today constituted the essence of the debate.

35. That new consideration of the law of the sea was particularly important for the developing countries since it was taking place within the context of their struggle for the economic and social development of their peoples and had been preceded by the meetings of the United Nations Conference on Trade and Development and the recent special session of the United Nations General Assembly on raw materials.

36. His delegation attached great importance to the economic aspect of the question, particularly with respect to its relation to the definition of the delimitation of the territorial sea and an economic zone and to the safeguarding of the common heritage of mankind. The people of Madagascar were aware of the vital importance to them of the ocean around them, the Indian Ocean, it being a source of wealth, a natural frontier, a factor of isolation as well as communication, a place of confrontation and an area of heavy traffic. Bearing in mind the security and future of the Malagasy people, the Government of Madagascar, in September 1973, had opted for the immediate definition of its territorial sea and an exclusive economic zone which took into account both principles of law and economic factors.

37. Along with its concern for economic development, Madagascar wished to emphasize the sovereignty of the State, since the full exercise of sovereignty was the fundamental condition for the existence of the State, which constituted the foundation of the international legal order. Any attack on the sovereignty of the State represented a modification of its essence and, consequently, of the existing order.

38. In adopting resolution 2832 (XXVI), whereby it had solemnly declared the Indian Ocean to be a zone of peace, the General Assembly had taken into account the real magnitude of the need for peace and security. That need, which every State, particularly the most threatened and the most disadvantaged, had to take into account when adopting appropriate legislative measures in exercise of its sovereign rights, would profoundly modify the traditional law of the sea. In the light of criticisms made with respect to that approach, it would be easy to reply that the present law of the sea had derived from acts of States which had been considered sovereign because of their historical position, or to invoke the precedent of historical declarations which, however much they had come to be a part of the law of the sea, did not for that reason cease to be of a unilateral nature. However, the present Conference should rather emphasize respect for the personality and dignity of the disadvantaged countries. The developing countries were seeking not charity but justice based on the equality of rights of sovereign countries with respect to the sea, which only international law could establish. In that way, true meaning would be given to the maxim that "between the strong and the weak, it is freedom which oppresses and law which protects".

39. Mr. BAYONNE (Congo) said that at a crucial time in the history of the United Nations and of peoples in which the bases of a new international legal order were being established, his delegation was mindful above all of those who were not present at the Conference owing to reasons beyond their control: the authentic representatives of the peoples who were still under colonial domination in Africa, the authentic representatives of the peoples dominated by minority régimes in Zimbabwe, South Africa and Namibia, and the authentic representatives of the Palestinian people, the Viet-Namese people and the Cambodian people. Their absence demonstrated that backward and reactionary forces were continuing to oppose the attainment of universality by the United Nations, but the history of the past five years taught that legal fictions could not indefinitely stem the tide of history.

40. His delegation believed that traditional international maritime law was prejudicial to the vital interests of the developing countries and aggravated the extreme inequality of international economic relations. The new international law could promote a minimum of security in those relations only if it

embodied the values which could serve as a basis for the establishment of a just and equitable order in the exploitation of world resources.

41. The Congo, along with many other countries, had not participated in the formulation of the traditional law, and the holding of the United Nations special session on raw materials had constituted an official acknowledgement by the international community of the need for a new definition of economic relations between developed and developing nations. That historical fact should serve as an inspiration for the Conference, with the aim of ending, once and for all, economic imperialism and the plundering of the resources of the third world by the technologically developed countries.

42. The People's Republic of the Congo shared the dynamic concept of international economic relations and international law. In that spirit, it would work for recognition by the international community of the need for fixing new maritime borders capable of ensuring the protection of the resources of the developing States against the claims of developed countries. For that reason, he would mention some of the deficiencies of the traditional maritime law, suggesting the measures necessary for remedying them.

43. With respect to the territorial sea and the contiguous zone, the Geneva Convention on the Territorial Sea and the Contiguous Zone[2] had not been able to fix a uniform limit and had merely established general principles for drawing baselines. That omission in the law was the reason why certain groups of States were classified according to the breadth of their territorial waters. The People's Republic of the Congo believed that the maritime borders of States were legal realities in accordance with their vital interests, and for that reason any new definition of the limits of the territorial sea must take those interests into account. It therefore considered that there existed a complementary relationship, objective and obligatory, between the territorial sea and the exclusive economic zone.

44. With respect to fishing zones, the principle of freedom of the high seas was increasingly giving way to the recognition of the special rights of the coastal State to establish reserved zones and dispose of fishery products.

45. While the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas[3] contained some provisions concerning the special interest of the coastal State in maintaining the productivity of the living resources in any part of the high seas adjacent to its territorial sea, it made no reference to the breadth of the zone in which States could invoke that special interest. For that reason, the fishing zones had arisen as a consequence of unilateral decisions or bilateral agreements.

46. The Geneva Convention on the Continental Shelf[4] for the first time laid down that concept in a conventional legal instrument, but it contained clauses which could cause confusion or erroneous interpretations. The problems arose from the vagueness of its field of application, from the nature of the regulations set forth in it and from the rights which it recognized.

47. The first difficulty lay in the actual definition of the continental shelf. Article 1 defined the term, but the definition was doubtful because of the combination of two criteria, one fixed (the depth of 200 metres) and the other flexible and subjective, namely the limit of exploitability, which could give rise to varying interpretations. He wondered whether exploitation was to be understood as viable economic exploitation or as a mere scientific possibility, and whether the two criteria were independent, for if they were, the continental shelf would no longer exist in the geological sense of the term, and would be defined only in terms of the limit of exploitability. On the other hand, the two factors could also complement one another, an interpretation which would extend the coastal State's activities beyond 200 metres.

[2] *Ibid.*, vol. 516, p. 206.

[3] *Ibid.*, vol. 559, p. 286.

[4] *Ibid.*, vol. 499, p. 312.

48. Secondly, the distinction laid down in article 2, paragraph 4, corresponded to the distinction between benthic and pelagic species.

49. The delimitation of the continental shelf as between States whose coasts faced one another or which had a common border presented problems which were generally resolved through bilateral negotiations and agreements, although they had also been brought before the International Court of Justice.

50. The People's Republic of the Congo supported the establishment of an exclusive economic zone of 200 miles to protect the interests of coastal States over the waters, sea-bed and subsoil of the area adjacent to their coasts.

51. Within the economic zone, vessels and aircraft of all States would continue to enjoy the traditional freedoms of navigation and overflight, and the right of laying submarine cables and pipelines would be recognized, with no restrictions other than those necessary to enable the coastal State to exercise its rights of regulating the economic zone for the purposes of protecting itself against illegal and clandestine exploitation of its resources, and of promoting and ensuring the observation of anti-pollution measures, so as to safeguard the marine environment of the zone.

52. The concept of an exclusive economic zone was very valuable from the legal standpoint, and in his country's view it should replace the concept of the continental shelf as to the exploitation of sea-bed resources within the limits of national jurisdiction, and also the concept of the reserved fishing zone, which did not appear in any international treaty except the Fisheries Convention signed in London on 9 March 1964.[5]

53. Moreover, that concept would make it possible to grant non-coastal States or States with a limited coastline the right to participate on an equal footing in the exploitation of the living resources of the economic zones of neighbouring coastal States. That right would be given to non-coastal States for the purpose of maintaining the economic development of their fishing industries and of meeting the food needs of their peoples. Through the exclusive zone, developed countries could strengthen bilateral or regional economic co-operation.

54. The People's Republic of the Congo considered that the main purpose of creating an economic zone was the rational exploitation and use of marine resources, and the ending of the system of colonial agreements imposed by developed countries on the developing countries so as to exploit their land and marine resources. Moreover, the amount of capital invested in that area by the developed countries was ridiculously small in relation to the real needs of the developing countries.

55. The right to exploit the living resources of the economic zone, which was recognized for land-locked countries, went hand in hand with the right of free access to the sea. The People's Republic of the Congo favoured the establishment of a straits régime which took into account the specific interests of coastal States. The nature of the maritime space of islands should be determined in accordance with just principles that favoured their economic development. Further, it seemed essential that an international régime should be established for the exploitation of marine resources outside the exclusive economic zone, and he wished to affirm once again his Government's adherence to the principle of the common heritage of mankind.

56. Scientific research in the territorial sea or in the exclusive economic zone must be undertaken only with the express consent of the coastal State. Such research must, in any case, be for peaceful purposes, even if undertaken in the sea area beyond the limits of national jurisdiction.

[5] *Ibid.*, vol. 581, p. 56.

57. He hoped that the work of the Conference would lead to the establishment of a just and equitable law of the sea.

58. Mr. BUSSIER (Mauritius) said that, in order to promote their economic development, countries that had recently become independent had to lay claim to their rights over marine resources, assert their jurisdiction over maritime areas and protect the marine environment against all kinds of pollution, so that, in the future, all would have access to the treasures of the seas, on an equal footing and without depending on the charity of anyone.

59. Mauritius, because of its geographical location and its geomorphological status, was very much alive to the problems being debated at the Conference. As a country which was formerly called the key to the Indian Ocean, it was fully aware of the importance of navigation and communications, and took special interest in preserving the Indian Ocean as a zone of peace and neutrality.

60. It was gratifying to note that a large measure of agreement existed on a few basic principles, which Mauritius, for its part, subscribed to. He was referring more specifically to the 12-mile limit for the territorial sea, the concept of a patrimonial sea up to a breadth of 200 miles, a régime to govern the area beyond the limits of national jurisdiction, and the need to control pollution and make provision for the transfer of technology to States that needed it. None the less, he viewed with concern the fact that peoples that were on the verge of independence, notably those of Angola, Mozambique, the Seychelles and the Comoro Archipelago, would not participate in any way in preparing the Convention which might emerge from the Conference.

61. As a developing country and archipelagic State, Mauritius had its own problems, such as the protection of its coastline, the control of over-fishing, and the discovery of new sources of food, but in addition to protecting its interests and aspirations, no country could be insensitive to the legitimate rights of others, such as land-locked States, whose right of access to the sea could not be denied. For that purpose, a just balance had to be struck between the respective shares in marine resources of coastal and land-locked States.

62. In order to meet the aspirations of all, to abolish the rule of the waves by a privileged few, and to avoid anarchy on the oceans, his delegation was prepared to give its full co-operation so that a treaty of universal character acceptable to all, which would make the common heritage of mankind a reality, would emerge from the Conference.

63. Prince TUPOUTOA (Tonga) after expressing his appreciation for the fact that his country, although not a Member of the United Nations, had been invited to participate in the Conference, observed that for the peoples of the Pacific Ocean the sea was not only a highway to other lands and a vehicle for their national interests, but also, traditionally, a part of their life and a guarantee of their inheritance.

64. It was obvious that in the history of the law of nations the psychology of man's relationship with the sea had played a significant role; classical authors had held the view that the sea should be free of any human control and, consequently, that anyone might seize its resources. However, a critical point had been reached in the history of the law of the sea which coincided with the holding of the Conference and in which nature itself had challenged the ingenuity of man's mind; thus there was no need to reiterate that the resources of the sea were not inexhaustible.

65. It was admittedly difficult to reach any consensus as to how those resources were to be conserved, but at least there was already agreement that they must be conserved.

66. In 1887 King Tupou I had defined the boundaries of the Kingdom of Tonga by reference to the sea instead of by reference to the land. It was significant that neither in 1887, when the proclamation had been made, nor in 1971, when it had been circulated to all States members of the sea-bed Committee, had there been any hint of criticism of its purport, for although it constituted a departure from the law of nations as framed in Europe, it had been legitimized by the very rules of that system by virtue of the passage of time. Today those boundaries were an accepted fact and all Tongan laws were so framed as to operate within them.

67. His country, which valued freedom of navigation as much as proprietorship of the sea's resources, had an interest in maintaining the maximum freedom of transit consistent with its security, due account being taken of the threat posed by modern technology to the sea's living resources. Because it was an archipelagic State, Tonga had watched with interest and sympathy the evolution of the concept of archipelagic waters from the Hague Conference for the Codification of International Law, in 1930, where it had had its beginning, down to the meetings of the sea-bed Committee, where it had secured a prominent role. It was now an item on the agenda of the Conference, and the law of the sea would have to take into account the evident fact that archipelagic States presented special problems which could not be solved by the standard rules for continental sea coasts.

68. His Government had also examined the question of freedom of transit through archipelagic waters and the problem of its definition. In that connexion it would support any solution which did not prejudice the freedom of movement so important to a maritime nation such as his own. That special problem was similar to the problem of the States which bordered on international straits. In both cases it seemed possible to solve the problem by other means than by granting absolute discretionary powers to the coastal States, which could lead only to variegated patterns of local control and thence to controversy. For example, the problem of collision hazards might be dealt with by way of traffic separation in accordance with procedures promoted by the Inter-Governmental Maritime Consultative Organization. Of course, that would not resolve the question of the risks of pollution. Although existing treaties, which left control of pollution in the hands of the flag States, had not stopped pollution, the Conference should not pursue to unrealistic lengths the idea of coastal States' control over shipping as a means of putting an end to pollution.

69. It might be wondered what practical significance his country's boundaries had if, in one sense, they could be looked upon as an analogue of the archipelagic theory while, in another sense, they indicated a link with the theory of resource zones or patrimonial seas. The Pacific peoples were fully conscious of possession of neighbouring sea resources and, consequently, his Government recognized that other peoples might have similar impulses to protect those resources up to a limit of 200 miles. Beyond that limit lay the deep sea-bed whose status as "the common heritage of mankind" had to be reflected in the best possible manner in positive law. As the law stood at present, it did not matter a great deal whether the sea-bed beyond the continental shelf was susceptible of sovereign occupation or was exploitable under the law of the flag. In the first case, if the sea-bed could be occupied effectively, there seemed to be no reason why it could not fall under sovereignty, but that would seem possible only in shallow areas. Although his country was legally equipped to participate in the exploitation of the sea-bed, it would prefer that the possibilities of dispute be minimized by channelling the activity through an appropriate régime.

70. With regard to the question of islands, there was a risk that technology might make possible the erection of artificial structures on the sea-bed beyond the continental shelf and, consequently, appropriation. The danger was that much of the sea-bed could be withdrawn by that means from the purview of any international régime which might be set up. He recalled that in 1907 the law officers of the British Crown were of the opinion that the building of the Eddystone Lighthouse on a submergent rock had not only put the rock under the Crown's

sovereignty but had also endowed it with territorial waters. Having acceded to the Geneva Convention on the Territorial Sea and the Contiguous Zone, his country did not question the rule that an artificial structure did not of itself generate a territorial sea, but that rule had by no means settled the question of islands. In fact his Government had recently proclaimed its sovereignty over the islands of Teleki Tonga and Teleki Tokelau in order to forestall their occupation by a group of private persons who had announced that they intended to establish a legal system devoid of most of the controls characteristic of modern States. Clearly, attempts of that kind would be made from time to time and could not be tolerated by the States concerned. Accordingly, in considering the question of an international régime for the exploitation of the sea-bed beyond the continental shelf, the Conference would need to examine the question of excluding from the régime areas which could properly be reduced to sovereignty and did not constitute sea-bed in the ordinary sense of the term. The question was an aspect of the problem of the delimitation of the continental shelf, for if an island was considered to have a territorial sea, one must ask under what circumstances it would not have a continental shelf.

71. His country hoped that the deep-seated differences of policy regarding the use of the sea would not be the cause of dissension. Although it was unrealistic to expect that States which had been endowed with resources of energy in the sea would be reticent with respect to the extent of their claims, it must be acknowledged that the common good was the sum of individual goods and, accordingly, that reciprocal concessions must be made.

72. Mr. LING Ching (China), speaking in exercise of the right of reply, said that at the previous two meetings one delegation had made unjustified allegations against his country which he could not leave unanswered.

73. It had said that hegemony of the seas did not exist, while in reality it was a fact: it had existed in the past and existed now, threatening the legitimate rights and interests and the security of medium-sized and small States. To deny the existence of such hegemony, it must state the facts.

74. That delegation had also asserted that it was playing a constructive role in the Conference, and slandered those who opposed its hegemonism as spreading "political pollution". If there were people spreading political pollution, those people were none other than that delegation itself. The delegation which was disrupting the Conference was the same one which had long opposed its convening.

75. The essence of the law of the sea was the struggle to defend the sovereignty, security and national resources of many medium-sized and small countries, and hence a serious political struggle. The attempt of the said delegation to forbid the discussion of political questions at the Conference was aimed at preventing such countries from denouncing the crimes originating in the hegemony he had mentioned: crimes of aggression, plundering, threats, and intimidation.

76. If the Conference was to give birth to a just and rational law of the sea, all countries must be treated equally, and no country must be denied the right to speak freely.

77. The delegation he had mentioned had said on the previous day that China was seeking to make itself the leader of the third world. But that label could never be put on China, since China, which was one of the countries of the third world and would support their just demands, had never lorded it over others. His country had never been a super-Power and never would be one. The said delegation had tried to sow the seeds of discord but it would never achieve its design.

The meeting rose at 6.30 p.m.

29th meeting

Thursday, 4 July 1974, at 10.50 a.m.

President: Mr. H. S. AMERASINGHE (Sri Lanka).

General statements (*continued*)

1. Mr. MONTIEL ARGUELLO (Nicaragua) said that the expanding uses of the sea and the justifiable demands of States that their rapidly increasing needs be met had made it necessary to shake off the lethargy of the old law of the sea. The process of change had been accelerated. There were problems which could no longer remain unsolved. Insecurity, undue delays and uncertain rules did not help the developing countries.

2. Among the most important factors contributing to that irreversible march towards change in the law of the sea were: progress in knowledge about the sea and marine technology; the increase in the number of sovereign States demanding a voice in world decisions about which they had not been consulted at the time of the Geneva Conventions; the increasing demands of peoples resulting from their cultural evolution and their greater economic and social development; and changes in old concepts of international law and the emergence of new ones, which the Conference must gather, identify and codify.

3. The sea had come to be a new and ever more accessible means of promoting development, of solving other problems which development created, such as pollution, and of improving relations between the developed and developing countries. The new world order resulting from greater contacts among all peoples had made it necessary to make a new approach to the old law of the sea and to make new demands.

4. The classic use of the sea as a means of communication and the related new problems arising from the conflict between the need to ensure freedom of navigation and the jurisdictional requirements of coastal States must also be borne in mind.

5. The replacement of traditional independence and self-sufficiency by interdependence had made sovereignty and self-determination more than ever fundamental to an international legal order based on the principles of the Charter of the United Nations and on the loftiest aspirations of man. The State, before it could be replaced by socio-political experiments of doubtful value, must be viewed as the basic unit of the international system. Indeed, the importance of the State was increasing as international norms became crystallized. That was why one could speak of a purely national area of jurisdiction in which the State was the exclusive sovereign, and why the term "high seas" was limited by the term "national". That was also why there was significance in the concepts of "common heritage of mankind" and of the sea-bed and ocean floor beyond national jurisdiction.

6. Since States required physical, economic and political security, the areas essential to that security could not be outside their sovereign control. Indeed, the principle of sovereignty,