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.29

Summary Records of Plenary Meetings
29th 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)*

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,

which carried along with it the principles of self-determination and jurisdiction, could be limited only by equal rights enjoyed by other States. Thus, the international order developed not from the denial of the principle of unilateral jurisdiction, but from the need to harmonize equal sovereign rights.

7. Nicaraguan constitutional law might provide some positive contributions that could be used as bases for negotiation at the Conference. Article 3 of the 1974 Political Constitution, which developed from constitutional provisions dating back to before the 1958 Geneva Conventions, proclaimed a national territory under full State sovereignty that included the territorial sea, the continental shelf and all other submarine areas defined by international law.

8. With regard to the question of the breadth of the territorial sea, which had been fruitlessly debated at previous Conferences on the Law of the Sea, his country believed that a maximum 12-mile limit would reconcile the interests of coastal States and those of the international community. He was referring to the territorial sea in the classic sense, i.e. the sea considered as part of the territory of the coastal State, where foreign ships would enjoy only the right of innocent passage. Nicaragua would have no fundamental objection to a State using the term "territorial sea" to refer to a zone in which the freedoms of the high seas were respected, but it preferred to retain the traditional terminology.

9. It did not appear that the tendency in recent years to claim a territorial sea wider than 12 miles was based entirely on economic considerations. The reasonable and just ends which underlay such claims could be attained by means which did not so seriously affect the interests of the international community. The right of innocent passage, which was subject to numerous present and potential restrictions, was not an adequate safeguard.

10. His delegation was aware that the establishment of a 12-mile territorial sea would close off many straits used for international navigation, leaving only a right of innocent passage. Nicaragua favoured provisions which ensured freedom of navigation and which took into account the interests of coastal States in securjty of navigation and in prevention of marine pollution.

11. Nicaragua advocated revision of the definition of the continental shelf contained in the Geneva Convention on the Continental Shelf,[1] so as to include the shelf in its geomorphological sense, i.e. an underwater continuation of territory that included not only the shelf as such, but also the slope and the continental emersion, as well as the area of the sea-bed under the economic zone when that extended farther than the agreed definition expressed in real or physical terms. Faults or notches in the shelf should not be deemed to break its continuity.

12. Nicaragua advocated the establishment of an economic zone, or patrimonial sea, between the territorial sea and the high seas, with a maximum breadth of 200 miles from the coast. That zone should be considered as high seas for all purposes except the exploitation of its resources, which would fall within the province of the coastal State.

13. In considering each of the items before it, the Conference should consider the extent of world-wide international regulation and the part which could be left to regional and bilateral treaties. Treaties could contain provisions which took into account specific circumstances that could not be incorporated into an international convention. Such regional and bilateral treaties could also contain more efficient procedural provisions.

14. Since the sea-bed and ocean floor beyond the limits of national jurisdiction, by definition, did not involve questions of sovereignty but rather of exploitation of resources, States would have broad freedom of action as to their domestic law over such matters. As in the case of internal waters and exploitation of the high seas, the fundamental point was effective physical and technological accessibility and the availability of capital to achieve it. Such problems required pragmatic solutions. Rather than following principles of doubtful economic and political value, it was better to follow the methods provided by experience which, although imperfect, could be improved. The most important thing was that the developing countries, over an appropriate period, should acquire means which they now lacked to make their potential rights effective, and to make their hopes a reality.

15. A balance between the needs of national interests and those of justice was essential. The contemporary world needed a stable and certain law of the sea. Unilateral declarations, although made by peoples in exercise of their sovereignty, their right of self-determination and in justifiable defence of their interests and needs, were not the best means of establishing that law. By taking into account national interests and making a genuine effort to reconcile the equal interests of sovereign States, the need for unilateral declarations could be eliminated. Nicaragua was prepared, as always, to co-operate fully to attain that goal.

16. Mr. ENNALS (United Kingdom) congratulated the President for his success in bringing to a successful conclusion the crucial negotiations over the rules of procedure. The fact that the Conference had been able to adopt the rules without a vote was the best possible augury for the conduct of its substantive work.

17. The Conference might be the most important international conference ever held. Despite conflicts throughout history over the control of land, most nations today lived in secure frontiers. But too many lived in dire poverty, and the gap between rich and poor was widening.

18. In past centuries the map of the world's land mass had been carved up, and recent history had seen people fighting to achieve their freedom from alien domination and exploitation. In the future, however, unless the Conference succeeded in securing an effective and acceptable régime, it was the sea that could become an arena of world conflict.

19. As an island nation, the United Kingdom had always had a special interest in the sea, which had at times isolated it, but had also been its link with the rest of the world. Britain lived by trade, and 98.5 per cent of its trade, by weight, was sea-borne. Much of the trade—oil, raw materials and food—was shipped over long distances. If sea transport were to be less dependable or became more expensive, his country's economy would be harmed more than those of continental or more self-sufficient countries.

20. What was really new about the sea, and what gave the Conference its importance and urgency, was the dramatic revelation of the wealth which lay on and beneath the sea-bed. Oil was the best-known example. By 1980 offshore oil wells could perhaps be producing more than half of the world's total oil supplies instead of the current 18 per cent. The United Kingdom expected to be self-sufficient in oil supplies by the early 1980s. The maintenance of its existing right to explore and exploit the resources of its continental shelf, and the security of its installations from damage or destruction, accidental or intentional, were thus vital. Its need was shared by the majority of countries as oil exploration and production was now being undertaken off the coasts of almost two thirds of the countries represented at the Conference.

21. Turning to other areas of exploration, he noted that there was still much to be learned about the resources of the deep ocean floor, but that the mineral wealth to be gained from manganese nodules on the deep sea-bed might prove to be even more important than oil. Apart from manganese, those nodules were known to contain nickel, copper and cobalt in exploitable quantities. The data becoming available indicated that the quantities of metals recoverable might well correspond roughly in magnitude to known land-based reserves. Those

[1] United Nations, *Treaty Series*, vol. 499, p. 312.

new sources of wealth presented exciting prospects for a world with a rapidly rising population and a shortage of many resources. However, they also presented dangers. It was not difficult to imagine the competition which could be stimulated if the sea-bed was not internationalized. The days of the gold rush in the United States could be relived, but with a much higher level of technology than was possessed by the pioneers of those days. It was therefore important to devise equitable methods for controlling and sharing the benefits of that new wealth. It could not become the preserve of just those nations or enterprises that now had the technology to exploit it, but must be used for the benefit of every member of the international community.

22. An effective régime had to be created for ensuring, in accordance with General Assembly resolution 2749(XXV), that the resources of the sea-bed beyond the limits of national jurisdiction should in fact be the common heritage of mankind, and should be developed for the benefit of the whole of the world community, especially the developing countries. Clearly, the effect of the exploitation of sea-bed resources on the export receipts of certain developing countries would have to be kept under careful review, although the fears of some mineral producers about the effects of deep sea-bed exploitation were largely unfounded. It was not the task of the Conference to halt the progress of the exploitation of mineral wealth, but rather to ensure its effective organization and distribution in the interests of humanity.

23. The United Kingdom of course had many vital interests to protect at the Conference. Fortunately, they were not interests that needed to conflict with the concerns of most other nations. First, the United Kingdom was a major shipowning nation. Its fleet, at 29 million tons, was the third largest in the world, representing about 10 per cent of world shipping. A large part of its shipping industry was involved in trade with other countries. Thus the United Kingdom and, he suspected, the countries with which it dealt, regarded it as of the greatest importance that freedoms of navigation and overflight should not be whittled away. His country would seek to ensure the preservation of the right of innocent passage through territorial waters and freedoms of navigation and overflight outside them.

24. Further, the United Kingdom had a vital economic interest in the protection and development of its fishing industry. It had a large and varied fishing fleet made up of inshore, middle and distant-water vessels, and had the interests of those sectors firmly in mind. Taken together, their annual catch amounted to about 1 million metric tons, which represented a very significant addition to the need of a country such as the United Kingdom which imported half of its food stocks.

25. The United Kingdom was concerned that its fleets should, for the benefit of the communities from which they came and for the sake of the nation's food supplies, secure the maximum economic catch. At the same time it was acutely aware that it must have regard to the future. Like all fishing nations, it had an obligation to conserve the invaluable protein resources of the sea. Certain valuable fisheries had in fact been so overfished in recent times that they had ceased to be of any current value as a resource. That was irresponsibility of the most short-sighted kind, in view of the fact that the world's demand for food-stuffs, particularly protein, was continuing to grow.

26. The United Kingdom Government had consistently supported attempts to establish and enforce effective conservation measures, so as to maintain the maximum sustainable yield for human consumption. However, there were at present many stocks which were in danger if international action was not taken quickly. It was essential that there should be proper scientific monitoring of stocks and adequate means for regulating fishing by licence and other appropriate methods, both within a nation's own waters and on the high seas. It was essential, too, that quick action should be taken before any further serious damage was done. It was not only the long-term preservation of the fish supplies of the fishing nations which was at stake, but also the protein-rich catches which were increasingly important for the third world countries. The United Kingdom also had a special interest in anadromous fish, particularly the salmon which bred in British inland waters but migrated to areas outside its fishing limits. Like all species, salmon were subject to the dangers of over-exploitation, but because of their characteristic patterns of migration, special arrangements were appropriate for their conservation.

27. The world was at last waking up to the dangers of pollution. There had been increasing pollution of estuaries, coastal seas and the open sea by industrial waste, domestic effluents, toxic chemicals, oil, and sometimes the deliberate dumping of polluting substances. That could no longer be tolerated, for everyone would suffer from it.

28. Like many of the other nations represented at the Conference his country had defence commitments which must not be imperilled. It was concerned not only with the defence of British interests, but with the fulfilment of its obligations to other nations in the areas of the Mediterranean and the North Atlantic, the Persian Gulf, the Indian Ocean and the Pacific. Those interests, like those of other countries, required the freedom of navigation and overflight to which he had referred. In addition, they required that ships and aircraft should be able to move freely, safely and expeditiously through and over straits and archipelagos.

29. There had been proposals that scientific research in the oceans should be subjected to close regulation and control. However, he believed that any attempt to halt the work of oceanographers, marine biologists and others who measured ocean currents, or took samples of sea water or mud and rock from the sea, would be a setback to the development of knowledge of the ocean which brought so many benefits to the whole world. What must be achieved was a régime which served the interests of all countries by promoting the increase and dissemination of that knowledge, rather than restricting it.

30. Although the various countries had their own interests to protect, if that were their only motive the Conference would break up in disarray. The overriding concern of his delegation was to seek a new convention which would be generally acceptable to all States. There was a need to strengthen the law of the sea, and that could be done only by revising it by general agreement in order to meet the present and future needs of the world community as a whole. Negotiation and compromise would be essential. The aim in the weeks ahead in the Committees and the plenary would be to seek the maximum degree of common ground.

31. The Conference was an exercise in reconciliation on a scale larger than had ever been attempted since the United Nations Charter had been drafted. It was essential to achieve an effective convention which commanded such wide acceptance that it would be ratified quickly, if possible by every participating nation. The validity and utility of the agreement would be gravely damaged by any nation which decided to act on its own. In order to achieve such world-wide agreement, everyone would have to make some compromises. No nation, however strong, could or should expect to obtain all it wanted. The common ground of all nations, including land-locked countries and developing nations, must be balanced against purely national interests.

32. On the issue of fisheries, the United Kingdom had supported the existing rules of law, providing for narrow limits to national jurisdiction, but with international regulations established by regional fishery commissions. That régime had seemed to afford the best advantage not only to his country's own fishing interests but to those of a number of other countries in the North Atlantic regions, including those most closely associated with the United Kingdom. His country was firmly opposed to individual States extending their fishery limits uni-

laterally. In that, as in other aspects of the law of the sea, it was essential to proceed by way of international agreement.

33. The discussions in the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction and, indeed, the positions already taken in the Conference by previous speakers, had made clear the imperative needs seen by many Governments to evolve a new régime of fishing which would take account both of modern developments in fishing techniques and of the pressing needs of coastal States. In the interests of securing a general agreement on a new convention, his delegation was now ready to discuss positively and constructively the concept of an economic zone of 200 miles, as a measure of progressive development of international law. But if new rights were to be created, it was reasonable to look for balancing obligations. His delegation's position was therefore conditional on the establishment of satisfactory rules for such a zone, as well as on the freedom of navigation. It hoped in that way to achieve a satisfactory overall accommodation covering the wide range of issues before the Conference.

34. Offshore oil was of vital importance to the United Kingdom economy, as to that of many States. His delegation would seek to clarify further the limits of a coastal State's rights to explore and exploit such resources. In its view, a coastal State already had, under present international law, sovereign rights over the resources as far as the submerged edge of the continental margin. It would seek to convince other delegations that that position should be clearly maintained in the new convention.

35. His delegation was prepared to support a maximum limit of 12 miles for the territorial sea, subject to agreement on a satisfactory régime for the transit of straits used for international navigation. As everyone knew, extension of the territorial sea to 12 miles throughout the world would mean that in over 100 straits used for international navigation a present high-seas route would cease to exist. That could create serious difficulties for the ships and aircraft of many States. Accordingly, his delegation would work for a new régime which would preserve the freedom of navigation and overflight, and protect vessels in transit from arbitrary interference by coastal States. At the same time, the United Kingdom, as a coastal State bordering on one of the busiest shipping routes in the world, the Strait of Dover, shared the problems of strait States and was concerned to ensure that their interests should be safeguarded.

36. His delegation was prepared to support proposals for the creation of what would be a new concept in international law, that of an archipelagic State. The draft article which the United Kingdom had presented the previous year in the sea-bed Committee on the rights and duties of such States (A/9021 and Corr.1 and 3, vol. III, sect. 33) had been intended as a basis for discussion. There were two important principles which any proposal on the issue must embody. First, it must contain a clear and objective definition as to which States could claim archipelagic status. Secondly, there must be satisfactory provisions for navigation and overflight by ships and aircraft through and over the archipelago.

37. The United Kingdom attached great importance to the control of marine pollution from all sources: land-based discharges, dumping, exploration and exploitation of the sea-bed, and discharges from vessels. In the past, the world's oceans had been used as a sort of convenient receptacle for the disposal of all types of waste matter. Up until recently, that had been tolerable, because the natural physical, chemical and biological processes of the waters were able to break down the wastes and render them unobjectionable. But with recent changes in types of waste matter, particularly the inclusion of many hazardous and toxic man-made substances, and in certain areas the overloading of the sea with waste, it had to be recognized that the purifying capacity of the sea was not unlimited. Action was therefore required by States to limit the use of the sea as a receptacle for polluting substances. His delegation hoped that firm obligations in that field could be agreed at the Conference and accepted internationally afterwards. It would like to see more research into pollution problems, the implementation of a soundly based environmental monitoring system, and the free exchange of relevant information. It hoped to see all countries, including the developing ones, enabled to play their full role in that field. If, however, freedom of navigation was to be preserved, and unnecessary interference with shipping and the consequent exacerbation of international relations was to be avoided, it must be recognized that anti-pollution measures must be internationally agreed and accepted. In recent international conferences, the nations of the world had shown their readiness to co-operate in that way, and his delegation was proud that London had been the place where two such conventions had been successfully negotiated.

38. In his view, the new convention on marine pollution should not spell out detailed regulations, but should establish a framework for other more specialized conventions by setting out general rights and obligations of States. Provisions regarding pollution from vessels must allow the environment to be protected without prejudicing the free movement of ships. That was best done through the stricter enforcement by flag States of the provisions of international conventions, and his delegation would propose ways of strengthening the link between a flag State and vessels flying its flag. The United Kingdom shared the concerns of other coastal States in that field. It had to recognize, however, that the major sources of marine pollution around the world's coasts was in fact from the land itself. It was the responsibility of coastal States themselves to establish effective measures for controlling pollution from that source. As regards pollution from other sources, the coastal States' interests must be adquately safeguarded.

39. The United Kingdom attached prime importance to the establishment of a satisfactory compulsory procedure for the settlement of any disputes which might arise. It did not anticipate frequent sharp disputes, or at least hoped they would not arise. But settlement procedures were valuable in order to ensure that the new convention would be interpreted and applied uniformly around the world. The International Court of Justice should have the major responsibility for that function. However there were a number of specific fields in which different procedures might well be appropriate. Those procedures should also be compulsory. One could not have a situation where countries went their own way, contrary to international interests and agreements. The law must apply to all, equally and fairly.

40. The United Kingdom supported General Assembly resolution 2749 (XXV) and its historic declaration that the resources of the sea-bed beyond the limits of national jurisdiction were the common heritage of mankind. Those resources must be developed for the benefit of the whole world community, especially the developing countries. One of the major tasks of the Conference would be to determine the structure and powers of the International Sea-Bed Authority and to define the areas over which it had jurisdiction. It had to develop an effective system of common ownership which ensured that resources were exploited for the common good, without either cramping development or creating an unwieldy administrative machine. The detailed proposal presented by the United Kingdom in 1971 for a licensing system which would have limited the area available to any State by a quota based on a variety of factors such as population, GNP and status as developing country, had not met with the support which had been hoped for. Thus, his delegation was very willing to look at alternative proposals which would: ensure that all countries, including the developing countries, were able to participate in exploitation and enjoy the benefits of the international area when they were ready to do so; favour developing countries in the distribution of revenue, perhaps through an organ of the Authority in

which the developing countries were in a majority; and provide for representatives of the developing countries to receive training in deep-sea mining technology.

41. At the same time, any régime must be one which would develop the resources of the international area in an orderly and economic way and ensure that all States were able in the shortest possible time to gain speedy access to the benefits of the resources of the area. His delegation was anxious to avoid the establishment of an unwieldy and expensive international authority which would prove to be a heavy burden in financial and human terms, and also to avoid any duplication of the activities of other United Nations agencies and organizations.

42. The Conference was dealing with issues of enormous complexity, yet of fundamental importance, for the promotion of international co-operation in general and for the establishment of effective laws of the seas in particular. It afforded an opportunity to take a major step forward in the progressive development of international law, and presented a massive challenge to diplomacy, for success at the Conference could pave the way for harmonious and peaceful use of the oceans by the world community for decades ahead. The Conference was also a challenge to the United Nations to demonstrate its ability to make the international community change in a peaceful and profitable manner, rather than to sit helplessly by while inevitable change was brought about by unilateral and perhaps violent methods. For all those reasons, the United Kingdom and its delegation would do all it could to contribute to the successful outcome of the Conference.

43. Mr. TOGANIVALU (Fiji) said that the Conference was one of the most important held in present times; if nations were to maintain peace and good order in their relations, the participants in the Conference must establish just laws for the oceans, which took into account contemporary political and economic realities.

44. Since Fiji was an oceanic nation composed of groups of islands, it was natural for him to refer to the problems of mid-ocean archipelagos. The sea and the land of Fiji were interdependent. The sea was regarded as an essential link between the islands of the archipelago; it was not only a roadway but a source of sustenance for many Fijians. Archipelagic peoples were farmers of the seas and the sea-bed; the control of the sea was as important to them as control of the land was to continental States.

45. In the past his country had repeatedly drawn attention to the need for recognition of the special position of archipelagic States in international law. A solution to the archipelagic problem was long overdue and his delegation would seek to find a solution which treated justly the interests of archipelagic States. He thought that it was now generally agreed by the participants in the Conference that such special recognition should be accorded.

46. It was to that end that Indonesia, Mauritius, the Philippines and Fiji had submitted a joint paper (*ibid.*, sect. 2) to the sea-bed Committee setting forth general principles concerning archipelagic States; those principles had later been elaborated in draft articles (*ibid.*, sect. 38) which provided a basis for consideration of the archipelagic problem; he hoped that they would be incorporated in the convention. The archipelagic States sought to establish what had always been regarded as theirs by tradition and custom, namely, the political unity of oceanic nations and their rights over the resources in their surrounding waters. Those aims could best be achieved by drawing baselines around the outer extremity at low-water mark of all the islands and drying reefs of an archipelagic State which were linked to each other geographically, politically, and economically as one unit. That method was an adoption of the archipelagic provisions of the 1958 Convention on the Territorial Sea and the Contiguous Zone,[2] the criteria for which were established by the International Court of Justice in the Anglo-Norwegian fisheries case.[3]

47. In order to reconcile the past divergence of opinion as to the status of the waters enclosed within the archipelagic lines a new approach had been proposed, not based on existing concepts of inland waters or territorial sea. The archipelagic States proposed in the draft articles that the waters enclosed within the archipelagic lines should be designated "archipelagic waters", while the territorial sea and the economic zone of the archipelago should be measured outwards from those lines.

48. Archipelagic waters, the sea-bed and subsoil thereof, the superjacent air space and all the resources contained therein would be subject to the sovereignty of the archipelagic State. But they would be subject to a special régime with respect to passage by foreign ships to the extent that the right of passage of such vessels should exist through the waters. Such passage would lie through sea lanes designated by the archipelagic State, running from high seas to high seas. The archipelagic State should take into account the routes customarily used for international navigation and the recommendations of competent international organizations. In exercising the right of passage foreign vessels should refrain from any acts prejudicial to the archipelagic State or impinging on its territorial sovereignty or political independence, in contravention of the United Nations Charter. The passing vessel must also observe the rules concerning safety of navigation and prevention of pollution.

49. The proposals he had outlined preserved for other States their right of passage and afforded the archipelagic State adequate control over its surrounding waters. Every State had the right to exercise such control, but for archipelagic States, with their complicated island networks, the exercise of their basic rights and responsibilities was rendered more difficult by the lack of any rules of international law relating to archipelagos.

50. His delegation appreciated the many expressions of support for the formulation of new rules relating to archipelagos and archipelagic States, and the efforts of those States which had themselves put forward proposals. It was aware that some States had great difficulty with the proposals, particularly with the definition of archipelagos, archipelagic States and the right of passage through archipelagic waters. It was to be hoped that the Conference would find a mutually acceptable solution.

51. The question of fisheries was also of great importance to his country, which was striving to develop its commercial fishing industry. One of the difficulties was that its vessels must compete with foreign-owned distant-water fishing fleets which took fish on a large scale from the waters surrounding the Fijian archipelago. Until a viable commercial fishing industry could be established, his country would continue to import large amounts of fish, which was a major source of protein for oceanic peoples. It was therefore vital to ensure that the fishery resources of the waters within and adjacent to the archipelago were effectively managed so as to ensure against over-exploitation. Fishery resources were renewable, but in the waters in and around the Fijian archipelago they were comparatively small and sensitive to over-exploitation. If they became depleted, distant-water fleets could move elsewhere, but Fijian vessels could not. Accordingly, his delegation favoured the establishment of an economic zone based on a simple distance criterion and unrelated to any species of fish. His delegation supported the proposals for a territorial sea of 12 miles and an economic zone extending for 200 miles, including the territorial sea. The coastal State should exercise jurisdiction over the resources in that zone, but the right of passage of foreign ships through the zone should not be impeded. His delegation had already submitted a paper (*ibid.*, sect. 31), on the question of passage through the territorial sea, which it hoped might be a basis for the solution of that difficult question.

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

[3] *Fisheries Case, Judgment of December 18th, 1951: I.C.J. Reports 1951*, p. 116.

52. His delegation supported the establishment of an equitable régime for the sea-bed beyond the limits of national jurisdiction. There were two basic issues: the determination of the limits of national jurisdiction beyond which the régime would apply and the determination of the scope, status, composition, functions and powers of the régime and the machinery required for its implementation. He did not wish to elaborate on the problems of establishing the limits of national jurisdiction, but he stated his delegation's view that the régime and machinery to be established must be capable of adaptation to any number of different circumstances. The International Authority should comprise an assembly open to all States parties to the treaty, with each member having only one vote in the assembly. There should also be a smaller executive council, in which all decisions on substantive questions should be taken by a two-thirds majority of its members. The Authority should be empowered to explore and exploit the area within its jurisdiction but it should not exercise that power itself until it could finance the operations from its own resources. It should operate initially as a simple regulatory authority administering the area within its jurisdiction through the agency of individual States or groups of States on a revenue-earning basis. The eventual direct exploration and exploitation could be carried out by the Authority alone or as a joint venture with any State or group of States. The parties to the treaty should not have to make capital contributions to the operational activities of the Authority.

53. Turning to the question of the preservation of the marine environment and the conduct of scientific research, he expressed the view that adequate power should be vested in coastal States to enable them to protect the marine environment of their coastal waters against pollution. The basis for that part of the Conference's work was to be found in the Declaration of the United Nations Conference on the Human Environment.[4] The regulations formulated by the Conference should embrace the right of coastal States to exercise control, and the Conference should seek to establish minimum standards to be enforced by the coastal States. Such standards should, however, take account of the capacity of the less developed countries to maintain them.

54. His delegation was in favour of freedom of scientific research, but it felt that coastal States should be enabled to regulate such research and impose controls for the preservation of the environment. The regulations should make States responsible for the imposition of controls designed to prevent damage to the marine environment of other States or of the high seas. Fiji and the other countries of the South Pacific had a particular interest with respect to the conduct by other countries of nuclear or other tests which might result in damage to the environment of any of the countries of the region. That particular concern has been most recently expressed in the communiqué issued by the South Pacific Forum earlier in 1974, in which the member Governments of the Forum reiterated their concern at the potential health and other hazards resulting from such tests. He would not elaborate on the question, but that should not be taken to mean that his country acquiesced in such tests.

55. Although he had dwelt on the problems of archipelagic States, his delegation had the utmost sympathy for the problems faced by other disadvantaged States, particularly land-locked and shelf-locked States and the small island States. Special consideration should be given to all such disadvantaged States in order that they might enjoy the maximum share of marine resources consistent with the legitimate interests of other States. Such problems should be solved by establishing a system of sharing on a regional or subregional basis.

Mr. Upadhyaya (Nepal), Vice-President, took the Chair.

56. Mr. PISK (Czechoslovakia) said that real progress in the development of the law of the sea could be made only if all States participating in the Conference made sincere efforts to harmonize their positions on a number of questions, such as the breadth of the territorial sea and the general régime of international straits, which were still unresolved. The Geneva Conventions were no longer adequate; on some questions, such as the right of access of land-locked countries to the sea, they had affirmed principles without adopting measures to ensure implementation; they did not deal with new questions and needs which had arisen as a result of scientific and technological developments; and they did not satisfy the needs of a number of coastal States in regard to the exploitation of marine resources. Moreover, many new States had been established since 1958 which had not had the opportunity to participate in the work of the codification of the law of the sea.

57. His delegation approached specific issues from the point of view of a land-locked country and attached particular importance to the questions of free access to and from the sea, freedom of transit, means and facilities for transport and communications, equality of treatment in the ports of transit States, free access to the international sea-bed and participation in the international régime of the sea-bed. Those questions were of great importance for all land-locked countries, including both developed States which exported industrial goods and imported raw materials and developing States which exported raw materials and imported industrial products. The right of free access to and from the sea should be affirmed as a legally binding principle in the convention. Land-locked States must also be given adequate legal guarantees ensuring them freedom of transit and use of facilities necessary for free access to and from the sea, including access to the sea-bed beyond the limits of national jurisdiction, due regard being had to the sovereignty of transit States. Transit should normally be regulated by bilateral agreements between the land-locked and transit States concerned in accordance with the principle of free access to and from the sea.

58. Land-locked countries were excluded from participation in the exploitation of resources of the continental shelf or fishery zone, and they therefore attached great importance to the régime of the exploitation of newly accessible resources of the sea-bed beyond the limits of national jurisdiction of coastal States. The proposed Sea-Bed Authority should, in managing the exploration and exploitation of sea-bed resources, take account of the special needs of land-locked countries and ensure equitable distribution of the benefits derived from exploitation of those resources.

59. He expressed hope that the draft articles relating to land-locked States (*ibid.*, vol. II, p. 16) submitted to the sea-bed Committee by a group of land-locked countries, including his own, would be reflected in the new convention. He would submit a working paper explaining in greater detail the principles and provisions of the draft articles. Land-locked and other geographically disadvantaged States, such as shelf-locked countries and countries with narrow shelves or short coastlines, constituted a large number of the States represented at the Conference. It should therefore devote serious attention to resolving their problems.

60. His delegation believed in facilitating rather than restricting the uses of the high seas and international water routes. He supported the almost universally accepted 12-mile limit to the territorial sea and hoped that that norm would be explicitly stated in the new convention. The Geneva Convention on the Territorial Sea and the Contiguous Zone could serve as a useful basis for consideration, although the régime of innocent passage should be amended in order better to reflect the legitimate interests of coastal States. One of the most important problems to be dealt with by the Conference was that of the legal régime governing the passage of ships through straits. Distinctions should be drawn between three categories of straits, straits regulated by existing international treaties, straits situated outside of international sea-ways, and straits connecting high seas and used for international navigation.

[4] See *Report of the United Nations Conference on the Human Environment* (United Nations publication, Sales No. E.73.II.A.14), chap. I.

The last category was the most important and should be dealt with separately. In dealing with passage of ships through the territorial sea, account should be taken of the interests, particularly the security interests, of the coastal State concerned. In the case of passage through straits, however, the interests of the international community in maintaining international navigation, transport of goods and friendly relations among States should be paramount. The unilateral application of restrictive measures by coastal States bordering on straits used for international navigation would affect many States, including industrially advanced land-locked countries. His delegation would therefore support a solution which, while safeguarding the legitimate interests of coastal States, would ensure free and unrestricted passage through straits used for international navigation.

61. Turning to the question of economic zones, he said that he would prefer a settlement whereby the area under national jurisdiction would not be excessive. The smaller the area under national jurisdiction, the larger the international area and the greater the benefit for land-locked countries. Nevertheless, he respected the efforts of other countries to meet the needs of their peoples, increase food supplies and overcome the consequences of the backwardness many of them had inherited from colonial rule. An agreement on economic zones, favouring the developing countries, could be an important element in a compromise solution of all issues relating to the international law of the sea. His delegation was willing to support that concept, provided that the interests of third States, especially land-locked States, and of the international community as a whole were safeguarded.

62. Recalling General Assembly resolution 3067 (XXVIII), which recommended that the problems of ocean space should be considered as a whole, he said that all groups of States should approach the problems with mutual understanding and co-operation to ensure the rational use of ocean space by all States in the interests of all mankind.

63. Mr. TORRAS DE LA LUZ (Cuba) said that, in view of the complexity of the issues relating to the law of the sea, it was not surprising that agreement had not yet been reached on some basic questions. Countries in Africa and Asia had hardly been represented at all at the 1930 Conference for the Codification of International Law at The Hague, and had been represented only partly at the 1958 and 1960 United Nations Conferences on the Law of the Sea, but those countries had now gained their independence and were represented at the current Conference. Together with the countries of Latin America which, after 150 years of independence, were still struggling to gain control over their natural resources, they formed a group of countries whose interests could not be disregarded. The growing awareness of developing countries was reflected in the anti-imperialist and anti-neocolonialist attitude of the movement of non-aligned countries, and their realization of the need for unity was reflected in the Group of 77. The anti-imperialist movement had been increasing in momentum ever since the October Revolution.

64. Since the decisions that the Conference would take would affect all countries of the world, including those which were not yet independent and those which were deprived of their own territory, he regretted that national liberation movements had not been invited to participate, if only as observers, in the Conference. He welcomed, however, the presence of the delegation from the United Nations Council for Namibia. It was the position of his delegation that the peoples of Palestine, Angola, Mozambique, Puerto Rico and all other countries which had not yet gained their independence should be represented at the Conference by those organizations which were fighting for their liberation.

65. On the same question of representation, he protested against the discriminatory attitude taken by the Conference in not inviting the Provisional Revolutionary Government of South Viet-Nam, the only true defender of the interests of the people of South Viet-Nam, whose existence had been recognized in the Paris Peace Agreement. In order to demonstrate its solidarity, the Democratic Republic of Viet-Nam was not attending the Conference either. He regretted that the delegation of the Saigon authorities had proceeded to make slanderous attacks on those two countries, even though their representatives were not present. The people of Cambodia were not represented at the Conference either, for they could not be represented by the Government which controlled only the capital, while more than three quarters of the country was administered by the Royal Government of National Union, the legitimate Government, under the leadership of Prince Sihanouk. It was regrettable that the principle of universality had not been respected.

66. If the Conference on the Law of the Sea was to be successful, it must take decisions by consensus. If the convention was to be truly universal, it must be accepted by all States, or at least by the overwhelming majority of States, and that could be achieved only through a consensus. Reaching agreement by consensus meant that not everyone was fully satisfied with the agreement but that everyone accepted it because it included what each one felt was essential. It required a spirit of understanding and the willingness of all participants to make concessions. Developing countries should make concessions only on matters that were not essential to the defence of their natural resources. If the just aspirations of the developing countries to manage and exploit their own marine resources was to be recognized and guaranteed, it was quite clear that the economically developed countries would have to make more concessions than the developing countries and that only their legitimate interests should be respected.

67. Commenting on the main issue before the Conference, he said that there were two main approaches. The first distinguished between the territorial sea and the patrimonial sea or economic zone, and the second recognized one single zone under the sovereignty and jurisdiction of the coastal State. His delegation supported the second approach. Its position was dictated by the principle of solidarity with Latin American countries, such as Peru and Ecuador, which were firmly defending their right to sovereignty over their natural resources against imperialism, and not by narrow national interests, for Cuba's geographical situation would impose special regional or subregional arrangements. The two different approaches both recognized the right of coastal States to exploit and benefit from the resources in the sea adjacent to their coasts for a distance of 200 miles. They also recognized the need to respect freedom of navigation and other traditional freedoms in the 200-mile zones.

68. Turning to the question of marine resources, he said that mineral resources were clearly part of the national heritage, no matter what their distance from the baseline within the 200-mile limit. The sovereignty of the coastal country over such resources must be absolute, since their exploitation by another country or foreign enterprise would deprive the coastal State of their benefits, and although the coastal State might not yet be able to exploit the resources, it would be able to do so in the future. However, absolute sovereignty did not necessarily guarantee that the exploitation of the resources would be for the benefit of the peoples concerned, since some Governments might entrust the exploitation of the resources to transnational corporations which, as history had proved, would be the principal beneficiaries.

69. As to living resources, particularly fish, the coastal States had a duty to ensure that the exercise of their sovereignty did not lead to the loss of food resources vital to mankind. That danger existed when the coastal State was not able to take 100 per cent of the possible catch in its zone. There were five requirements essential to the solution of the problem: a scientific determination of the limits to which the exploitation of living resources could go without their becoming exhausted; the pay-

ment of reasonable duties to the coastal State for the licence to catch the surplus fish in its zone; preferences for the developing countries and for those developed countries which helped to increase the fish resources of the zone; co-operation among the developing countries for joint exploitation; and equitable participation of the economically under-developed countries in the exploitation of the resources available after the previous preferences had been met.

70. The straits régime was a problem of vital importance for his country. Being determined to develop its merchant and fishing fleets and having an open economy largely dependent on foreign trade, it was natural for Cuba to be concerned to maintain freedom of navigation. Since its Revolution Cuba had had to contend with the aggressive policy of the United States and it was therefore essential that the fleets of friendly nations and of the socialist and the non-aligned countries should be able to sail freely to Cuban ports. Accordingly, his delegation supported the maintenance of the present régime in international straits, with proper guarantees for the riparian States. The future Convention must prevent the indirect but no less effective violation of freedom of navigation; in that connexion he cited the example of the United States Government's black list of ships trading with Cuba, which had caused some shipping companies to discontinue their services to Cuban ports, with a consequent economic loss for Cuba.

71. The question of archipelagos was another matter of particular interest for his delegation, since access to the islands of the Cuban archipelago lay through straits between certain neighbouring countries. His delegation thought that the archipelagic régime approved by the Conference should provide for freedom of navigation among the islands of archipelagos to which access lay through international straits.

72. His country had always supported the right of land-locked countries to free access to the sea. That general principle should be confirmed in the Convention. The application of the principle in individual cases should be regulated by bilateral agreements with the transit countries or by regional agreements.

73. He endorsed the view of the delegation of Trinidad and Tobago that the Conference should establish regional or subregional régimes for closed or semi-closed seas such as the Caribbean. He agreed with the representative of Barbados that the regulations for pollution control should not impede the development of the economically backward countries. He supported the decision of Argentina not to recognize any rights accorded under the convention to the territories occupied by foreign Powers or subject to colonial domination. His delegation wished to reiterate its support of Jamaica's offer to provide the headquarters of the International Sea-Bed Authority which was to be set up to regulate exploration and exploitation in the international zone.

74. In conclusion he read out the text of a telegram addressed by the Prime Minister of the Revolutionary Government and the President of the Republic of Cuba to the President of Argentina, expressing condolences on the death of President Perón.

The meeting rose at 1 p.m.

30th meeting

Thursday, 4 July 1974, at 3.40 p.m.

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

General statements (*continued*)

1. Mr. AL-HUBAISHI (Yemen) said that the absence of representatives of the national liberation movements recognized by regional organizations was a matter of grave concern to his delegation, and he asked that they should be invited to participate in the Conference. In particular, he urged the Conference to take the necessary steps to ensure the participation of the Palestinian people, represented by the Palestine Liberation Organization.

2. The principal aim of all countries was to reshape the law of the sea and adapt it to the economic, political, social and technological context in which it was to operate in the future, without obstacles, and with fewer conflicts and crises. Although his delegation recognized that both national interests and the community's interests must be harmonized in a general treaty such as that which the Conference was to draw up, he did not think that that could be done once and for all, since the interests were changing and so were the conflicts to which they might give rise. Therefore, he thought the suggestion made by the Secretary-General at the opening meeting—that some institutional machinery should be created to keep whatever rules were adopted under permanent review—was a very wise one.

3. Another problem which, in his view, had not been given enough attention until the present was that of the rights of coastal States with regard to closed and semi-closed seas. If a comparison of interests was adopted as a basis for the control that a State might exercise over its adjacent waters, the coastal States must be given full control and jurisdiction over such areas. The intensive and diverse activities that were carried on in those waters tended to centre on the exploitation of the natural resources, while according to the projections of technical development over the next few years, a great variety of activities would be carried on in a limited space. That would have the inevitable consequence of increasing the magnitude of the conflicts and of the interests involved and multiplying them.

4. His delegation was happy to see, as the debate of the Conference progressed, that many questions connected with the law of the sea which had been the subject of controversy were now virtually acceptable in principle for a large number of countries, as was the case for the concept of the common heritage of mankind. Once that principle was accepted, it necessarily involved giving very broad jurisdiction to an international body to administer the affairs of the zone for which it was responsible.

5. One of the questions which his delegation felt to be of the highest importance was the régime governing the passage of merchant and military vessels through straits when they were affected by the new 12-mile limit of the territorial sea. In his view, the best solution would be to achieve a balance between the interest of the world community as a whole and the exclusive interests of the coastal States concerned. When that régime was being worked out, it would be advisable to distinguish between straits connecting one part of the high seas with another in international navigation and those that were used for navigation between the high seas and the closed and semi-closed seas.

6. Recognizing the special importance of that question, his delegation, jointly with seven other delegations, had submitted