Third United Nations Conference on the Law of the Sea

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32nd plenary meeting

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32nd meeting

Monday, 8 July 1974, at 3.25 p.m.

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

In the absence of the President, Mr. Ochan (Uganda), Vice-President, took the Chair.

General statements (*continued*)

1. Mr. SURYADHAY (Laos) said that Laos, the only land-locked country in the South-East Asian region, had been present at the Kampala meeting, at which the developing land-locked and other geographically disadvantaged countries had set forth the basic principles of a common position concerning the current negotiations on the law of the sea. The Kampala Declaration (A/CONF.62/23) should be interpreted in the context of co-operation and constructive interdependence for the purpose of development between transit coastal States and land-locked States at the bilateral or subregional level. The Declaration laid down as fundamental rights the right of free access to and from the sea and access to its resources and the right of free transit; in that connexion he was pleased to note that many coastal States recognized those rights and were prepared to incorporate them in the future Convention on the law of the sea.

2. With regard to the right of transit, which should be approached on the same basis of juridical equality as the right of innocent passage, it must be borne in mind that it constituted an element of the sovereign equality of States, and also a basic necessity for the land-locked countries which must be able not only to have access to the high seas but also to exercise the rights deriving therefrom. Hence, if any part of the sea became an exclusive economic zone or fishing zone, the interests of those States must be effectively protected.

3. Another aspect of special interest to Laos was the new concept of the sea as the common heritage of mankind and, in that context, Laos fully supported the terms of the Kampala Declaration, which stated that land-locked and other geographically disadvantaged States must be adequately represented in all the organs of the international sea-bed machinery and that, in the exploitation of the resources of the sea, the following principles should apply: first, the rights and interests of all States, whether coastal or land-locked, must be taken into account; secondly, all rights currently exercised by the said States under existing international law must be maintained; and, finally, the international area must be so extensive and contain such resources as to ensure viable economic exploitation. Once that economic zone was established, it was only fair that it should be governed by a special régime which included provisions specially benefiting those countries which in the past had not had the opportunity to participate in the exploitation of the resources of the sea or to derive income from them.

4. In conclusion, Laos, a non-aligned country, wished to put on record its opinion that reasons of justice and equity justified inviting the national liberation movements recognized by the regional bodies to participate in the Conference.

5. Mr. SAULESCU (Romania) said that he was gratified that the present Conference was being held in one of the Latin American countries which had made such an important contribution to the codification of international law.

6. The problems facing the Third Conference, which appeared in its agenda, reflected the decision of the developing countries to assert full national sovereignty and independence and to lay the foundations for a rational and peaceful utilization of the seas.

7. The Conference was meeting at an auspicious time, characterized by a new approach to international relations based on mutual respect and benefit, and should further that process by solving the important problems before it, which were of the greatest interest for the peoples of the world.

8. Romania had signed several treaties of friendship and co-operation containing important principles bearing directly on the Conference's work, such as the sovereign right of every State to conserve, explore and exploit the resources of the sea areas adjacent to its coasts within the limits of national jurisdiction and the right of all States to share in the utilization of the resources of the international zone of the sea-bed and ocean floor.

9. The topics constituting the subject of the Conference's debates were of great importance to all members of the international community and it was therefore highly appropriate that participation in the Conference should be world-wide; in that connexion his delegation regretted that an invitation had not been extended to the Provisional Revolutionary Government of the Republic of South Viet-Nam and also considered that the Phnom Penh envoys were not entitled to act on behalf of Cambodia because the only legitimate representatives of that country were those of Prince Norodom Sihanouk, the Cambodian Head of State. His delegation was also in favour of inviting the national liberation movements.

10. Since the outset Romania had supported the new concept of the economic zone or patrimonial sea beyond the limits of the territorial sea. At present there was a trend towards recognizing the right of all coastal States to establish economic zones, and, in that context, the figures most frequently mentioned were 12 miles for the territorial sea and 200 miles for the new economic zone concept. Romania supported that new criterion, but at the same time was convinced that, in keeping with the principle of international co-operation and full respect for the sovereign rights of coastal States, suitable ways and means could be found also to ensure access to the economic zones for other States on a reasonable economic basis. His delegation considered it perfectly legitimate that certain priorities should be granted to the land-locked countries, the developing countries in general and States which had sought to form large fishing fleets but which had no abundant biological resources in the zones adjacent to their coasts.

11. On the question whether, beyond the limits of the territorial sea, there should be, in the future, only one economic zone also embracing the continental shelf, or whether both concepts should be considered separately, Romania maintained a flexible position, believing that both the interests of countries whose continental shelves were far in excess of 200 miles and the interests deriving from the establishment of a new legal entity—the international zone of the sea-bed and ocean floor designated as the common heritage of mankind—should be taken into account.

12. He agreed with other delegations that a political agreement already existed on the main aspects of the extent of national jurisdiction, and of the régime of each of its constituent parts, and hence that the time had come to give more attention to matters bearing on the delimitation of the sea spaces between neighbouring States. The future convention should cover the widest possible range of geographical, geological and other situations. The principles and criteria appearing in the Convention should be selected with the greatest precision, bearing in mind the need to arrive at equitable solutions.

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13. It was also necessary to specify the sea spaces surrounding islands, especially the small uninhabited islets situated in maritime areas which must be delimited. On that subject, his delegation did not exclude the possibility that an island and even an islet might have a particular sea space, but wished it to be clearly laid down in the new regulations that islands, and especially islets, could not in every case be considered on the same footing as the actual coasts of a State. His idea was that the Convention should distinguish between islands and islets and give consideration to the fact that the latter should not be taken into account for purposes of delimiting the sea spaces between neighbouring States.

14. As for the straits used for international navigation, it was necessary to strike a balance between the security interests of the coastal countries of the straits and freedom of navigation, especially for merchant shipping.

15. With regard to the proposal to establish an international zone of the sea-bed and ocean floor, the principles set forth in the 1970 Declaration[1] constituted the basic rules of the régime for the zone and a possibility of general agreement on the competences, structure and operation of the future International Sea-Bed Authority seemed already to have emerged. The main point was not to lose sight of the fact that a common heritage of mankind was involved, in the administration of which all States must participate as members of the future international organization. It was therefore of the utmost importance that the resources of the zone should be appropriately utilized from the technical and economic points of view and that, as part of the process, the relevant technology should be transferred to the developing countries.

16. Mr. THEODOROPOULOS (Greece) said that, owing to its geographical configuration, Greece was seriously concerned with everything affecting the status of the sea. As a coastal State it was concerned with preserving law and order in the waters surrounding its national territory, both continental and insular. At the same time, as a sea-faring nation, it was equally concerned with preserving the essential character of the oceans as the main avenue of communication among nations. That gave it a fairly balanced approach to the problems which the Conference was about to tackle and a wide spectrum of understanding of the issues involved. The Conference had the task of revising the law of the sea in the light of technological and political changes. The technological changes had made it imperative to take into account the new vistas opened to mankind for a wider and more profitable use of the renewable or non-renewable resources of the seas and, at the same time, to prevent the adverse effects of human carelessness and greed. It was the Conference's common concern that all those developments should take place in an orderly manner within a framework of internationally accepted rules of law.

17. The political changes, on the other hand, had made it imperative to take account of as large as possible a number of nations which had previously not had an opportunity to co-operate in the formulation of the law of the sea. He extended a welcome to all new States, especially those which in the past had not participated in the work of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, and assured the land-locked countries of his full understanding of their legitimate interests. The universality of participation in formulating the new law was an objective towards which the Conference must further strive. He therefore welcomed the presence of observers from liberation movements which were fighting for implementation of the principles of the United Nations Charter and were recognized by regional organizations accredited to the United Nations.

18. The task of the Conference was particularly complex, since it involved so many aspects of the problem, but one basic fact should not be lost sight of: the main and ultimate objective was to legislate, to set up normative rules of law as the sole means which the community of nations possessed in order to avoid lawlessness, arbitrariness and anarchy in that important area of the globe, dangers already visible in some parts of the world. Time was therefore of the essence and, complex though the task might be, the Conference must strive to reach a positive result at the earliest possible moment.

19. The spirit in which the Conference had adopted its decisions on the rules of procedure was significant. All delegations had subscribed to the idea of compromise among divergent views, but at the same time firm ground-rules of procedural law had been adopted which would become operative if rapprochement proved impossible. He firmly believed that the same attitude should prevail when matters of substance were taken up. He was confident that all the small nations represented in the Conference shared with him the view that the existence of unambiguous rules of law were the best means for the protection of their rights.

20. Those general thoughts could be translated into a few specific guidelines which his delegation would follow at the Conference. First, the modernization of the law of the sea was dictated by social needs and technological changes and therefore the progressive development of the international law of ocean space reflected revolutionary ideas which departed from the classical law of the sea. At the same time, however, the new ocean law was emerging as an evolution of, and without derogating from, the fundamental principles of international law. More specifically, the codification of the new law should be carried out in harmony with the principles and purposes of the United Nations Charter; the principles of the sovereign equality of all States, of equality of rights, of the indivisibility of territorial sovereignty, whether continental or insular, constituted the cornerstone of the international law of all times. A basic consideration determining the position of his delegation was the conviction that a convention or conventions should be drafted which would faithfully reflect the purposes of the Charter.

21. Secondly, his delegation recognized the need to formulate a convention which would include general legal regulations relating to the fundamental maritime problems. The Conference should strive to formulate rules of law protecting the legitimate interests of all States and covering the basic issues before it. The less room it left for bilateral arrangements, the better would it protect the international legal order.

22. A third consideration was the need to unite the efforts of all delegations with a view to the conclusion of a convention which would have truly universal application. Now that almost universal participation in the Conference had been achieved, members should strive for universality of application in order to meet the pressing requirements of the times, in other words, to unite the whole human race under a body of rules of law which would have world-wide acceptance.

23. Fourthly, if a viable convention was to be formulated it was essential to avoid the establishment of a plurality of régimes in relation to territorial seas and other zones of international jurisdiction. Despite geographical diversities, which seemed inevitable, a convention should take account of the unity imposed by the principles of the indivisibility of sovereignty and equality of treatment, as well as by the primary aim of every system of law to be able to count on general and uniform application.

24. Finally, his delegation considered it necessary to achieve a satisfactory over-all accommodation by balancing the progressive development of the rights and obligations of all States under international law against respect for rights acquired under existing international conventions, especially those adopted under the auspices of the United Nations.

[1] Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction (General Assembly resolution 2749 (XXV)).

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25. Summarizing Greece's position on some of the major items of the agenda, he said that where the territorial sea was concerned his delegation supported a uniform breadth of 12 nautical miles. In the territorial sea, freedom of navigation in the form of the traditional innocent passage of all ships of third countries should be respected. It considered that the ideal of every system of law to provide a uniform regulation together with the principle of equality of rights should lead to the conventional acceptance of the right of every State to extend its territorial waters up to the limit provided for under the convention. With regard to the economic zone, his delegation was prepared to support the establishment of an economic or patrimonial zone of 200 nautical miles over which the coastal State would exercise jurisdiction for the exploration and exploitation of all its living and non-living resources without jeopardizing at the same time three freedoms which must be maintained and protected: freedom of navigation, freedom of overflight and freedom to lay cables and submarine pipelines. International standards for fishery regulations could also be envisaged in that zone. His delegation further noted with satisfaction that several delegations sponsoring draft articles on the economic zone interpreted exclusive jurisdiction over the 200-nautical-mile economic zone as in no way precluding the issuing of fishing licences to those who had in the past used those ocean spaces for fishing purposes.

26. The best solution for the establishment of new zones of sovereignty or national jurisdiction in the case of opposite or adjacent States which were precluded by geographic conditions of proximity from extending the zone to the full limit was the median line of equidistance, in the absence of other arrangements.

27. Greece was both a continental and an insular State and it was interested in preserving the unity imposed by the fact that its islands were closely linked geographically in a relatively small sea area. The fact that islands formed an intrinsic geographic unit had led to widespread recognition of the right to draw straight baselines and unite closely linked islands, irrespective of whether an archipelago was part of a State also possessing a continental territory or formed a State in itself.

28. Greece further believed that innocent passage through straits used for international navigation struck the proper balance which served the interests of the international community as a whole by merging two fundamental concepts of international law: freedom of navigation on the one hand and the security considerations of the coastal State on the other. His country was among the sponsors of draft articles on innocent passage through territorial waters and straits (A/9021 and Corr. 1 and 3, vol. III, sect. 6) with the primary aim of satisfying those two concepts in a balanced manner. Those draft articles offered the additional advantage that they were specific and precise in enumerating the rights and obligations of both the coastal and the flag State. Therefore Greece, together with the other sponsors, believed that the draft offered a solid basis and a model for further deliberations.

29. His delegation wished to repeat that its position was based on its sincere adherence to freedom of navigation as a fundamental principle and a basic need of the international community which must be safeguarded without prejudice to the minimum security needs of the coastal State. Greece was therefore determined to ensure freedom of navigation, on which it was heavily dependent for its very existence.

30. His delegation felt that it had a balanced and objective point of view with regard to the problems of protecting the marine environment, for Greece was a country which depended on its continental and insular coasts and at the same time was equally interested in world-wide navigation. Endorsing the spirit of the Declaration of the United Nations Conference on the Human Environment,[2] it was deeply concerned about the rapid deterioration of the marine environment and urged that measures should be taken unilaterally or multilaterally to control the sources of land-based pollution, which, as was well known, were responsible for more than 80 per cent of the elements that polluted the seas. As far as pollution from ships was concerned, the very nature of international navigation necessitated a global approach through appropriate international conventions, which should be elaborated in a more technical and specialized forum, in order to protect the quality of the marine environment for the good of all without unduly jeopardizing international navigation, which was equally important to all nations. Therefore, uniform regulation should be achieved so as to avoid having a mosaic of varying and possibly contradictory regulations which would create conditions detrimental not only to those countries which hoped to develop their own new merchant fleets but also to international trade and to the international community as a whole. The new comprehensive International Convention for the Prevention of Pollution from Ships drafted under the auspices of the Inter-Governmental Maritime Consultative Organization was proof that positive results could be achieved in that way. Consequently, his delegation maintained that the Conference should establish a general framework and enunciate over-all guidelines on the basis of which the appropriate technical bodies could elaborate specific norms. It further believed that co-operation between the flag State and the coastal State with regard to the application of those norms should be encouraged and regulated, the principal responsibility resting with the flag State. The coastal State would of course have a major role to play in cases where the flag State could not or would not enforce internationally agreed norms and in cases of emergency.

31. Furthermore, it was only natural that due account should be taken of particularly vulnerable areas, such as the Arctic or the Mediterranean, where special measures and procedures might be provided for.

32. As to scientific research, his delegation felt that it was closely related to the problems of the transfer of technology. If those ideas were to have any meaningful content, the link between them would have to be recognized; scientific research for peaceful purposes—and his delegation stressed that the purposes should be peaceful—should give the developing countries an opportunity to share in the technological achievements which, in a way, served mankind as a whole. The international machinery to be established should benefit the developing nations with respect both to the transfer of technology and to the training of personnel. Greece also subscribed to the notion that the sea-bed beyond the limits of national jurisdiction was the common heritage of mankind and it did so in full awareness of the fact that that notion constituted an innovation.

33. He presumed that all were aware of the great responsibility which they undertook to share with respect to the management of that immense area and its potential wealth, taking into account equitable distribution and placing special emphasis on the needs of the developing countries, both coastal and land-locked. As the new Authority to be established would play a crucial role it was essential, in defining its mission and its powers, to ensure that it would not be anaemic or atrophic and would not be asphyxiated by bureaucratic pollution or crushed in its infancy by the burden of excessive expectations. His delegation could state then and there that the offer concerning the headquarters of the Authority made by the Government of Jamaica, with the support of the Latin American countries, appeared to it to be a happy choice.

34. Mr. MANNER (Finland) said that in the opinion of his country the situation prevailing in the Baltic Sea area was satisfactorily regulated under existing treaty provisions and that, as far as Finland was concerned, it should be noted that his Government had recently taken measures for the establishment of a fishery zone extending to 12 nautical miles from its coast. With regard to the exploration and exploitation of the

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

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natural resources of the sea-bed, it should be borne in mind that the Baltic Sea as a whole was a continental shelf area, divided between its coastal States in conformity with the rules of the Geneva Convention on the Continental Shelf.[3] In those circumstances, his delegation hoped that the results of the Third Conference on the Law of the Sea would not entail any radical changes in those arrangements.

35. His Government felt that the final goal of the Conference was not merely a second codification of the law of the sea, in the form of a set of new rules, but the establishment, through the application and implementation of those rules, of a new legal order for the largest part of the earth's surface. As a Member of the United Nations, Finland had always emphasized the importance of the work done by international bodies in that field and it was one of the few States which had ratified all four Geneva Conventions of 1958 and applied their rules in practice.

36. One of the most important issues before the Conference was the extension of coastal State jurisdiction. In principle, that jurisdiction meant absolute sovereignty over the territorial sea as an integral part of a State's territory. The essential elements of that sovereignty were the political, legal and administrative powers of the coastal State, but it also contained an exclusive right to the natural resources within that area. Because the territorial sea was not subject to the principle of the freedom of the seas, which *inter alia* included freedom of navigation, the extension of its breadth should be considered in the light of the necessity for such a measure. His delegation believed that the coastal States had no essential needs requiring the extension of the territorial sea beyond reasonable limits. Finland was therefore in favour of fixing the maximum breadth for the territorial sea at 12 nautical miles. Its conclusion was, however, based upon the fact that there were means other than the extension of the territorial sea that could be used to safeguard the essential economic needs of the coastal States. That had already been recognized in principle in the 1958 Convention on the Continental Shelf. At the Third Conference the new concept of the patrimonial sea, which would extend the coastal State's jurisdiction over living and non-living resources beyond its territorial sea, had become an essential element of the proposed new legal order and had been widely supported.

37. The position of the Government of Finland regarding the proposed extension of coastal State jurisdiction was based upon the need to ensure the conservation and use of the resources in question for the benefit of the population of the various coastal States. His delegation was therefore not opposed to the inclusion of the concept of the patrimonial sea as part of a general agreement on the new legal régime for the seas of the world. Nevertheless, he thought it necessary to point out certain negative aspects which should be taken into account by the Conference.

38. First of all, it was impossible to ignore the fact that the proposed extension of coastal State jurisdiction beyond territorial waters would widen the already existing gap between the economic advantages enjoyed by the coastal States, on the one hand, and the limited benefits of States without direct access to the ocean, on the other. It was therefore necessary to recognize the special needs and interests of the land-locked countries and also of the shelf-locked States, including Finland.

39. Secondly, there were reasons to believe that strict application of the concept of the patrimonial sea might lead to a merely negative system of prohibitions. The developing States might become more dependent on the economic and technical assistance granted by foreign enterprises or the richer industrial States. To avoid such dependence, it was necessary to combine extension of coastal State jurisdiction with measures of other kinds which could help the developing countries to preserve their economic freedom.

40. Thirdly, the relationship between the extension of coastal State jurisdiction and the exploration and exploitation of sea-bed resources as the common heritage of mankind must be taken into account. In that connexion, although there had been encouraging results from the exploration of the possibilities of mining manganese nodules, it must be remembered that such mining could be started commercially only towards the end of the present decade. The significance of the use of those resources as a counterbalance to the extension of the jurisdiction of the coastal States was thus considerably reduced. The new international régime for the sea-bed and ocean floor outside the limits of national jurisdiction needed to be as effective as possible, and it was essential to give the international authority all necessary means and powers, not only for controlling and regulating sea-bed mining activities, but also for initiating new projects and promoting all related activities.

41. Special attention should also be given to enclosed and semi-enclosed seas. Finland, as a coastal State of the Baltic Sea, was well aware of the special nature of the problems typical of enclosed seas, including the interdependence of interests of the respective coastal States. For that reason regional arrangements relating to certain enclosed sea areas were in many cases more appropriate than the application of general rules of law.

42. In connexion with regional agreements, he drew attention to the Convention on the Protection of the Marine Environment of the Baltic Sea Area (A/CONF.62/C.3/L.1) the first multilateral treaty to take an over-all approach to the prevention of marine pollution. That Convention established an institutional and organizational framework for the implementation of its provisions, especially those relating to the prohibition of dumping of all kinds. The Helsinki Convention was not, of course, the only multilateral regional convention concerning marine pollution.

43. There still remained many unsolved problems relating to the protection of the marine environment as a whole. Co-ordinating rules of a general nature were necessary to close the gaps and remedy the deficiencies of the present heterogeneous treaty system. There seemed to be a particular need to develop rules concerning the liability of States for damages caused by pollution, and such rules should be included in the new convention on the law of the sea.

44. Finally, his delegation was prepared to listen to constructive discussion and to take into account the opinions and proposals of other delegations in order to reach a consensus which was essential if the results of the Conference were to be lasting.

45. Mrs. CHIBESAKUNDA (Zambia) said that Zambia was not only land-locked and developing, but also in an invidious geopolitical situation. The gravity of that situation had led to various resolutions by the Security Council and the General Assembly of the United Nations. It was a matter of regret that national liberation movements recognized by regional or continental organizations were not represented at the Conference. They would soon be masters of their own destinies and might legitimately voice the complaint that they had been presented with a fait accompli.

46. The four Geneva Conventions, concluded at a time when many of the States attending the Conference had not yet achieved independence, did not take adequate account of the needs and aspirations of those States. The Conference therefore provided most developing countries with their first real opportunity to review the whole law of the sea and to establish a new international order based on justice and equity.

47. Some of the main issues on which attention needed to be focused were access to the sea and the sea-bed beyond the limits of national jurisdiction, equal treatment in the ports of coastal States, limits of national jurisdiction, and the international régime and international machinery for the sea-bed beyond the limits of national jurisdiction.

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

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48. With regard to access to the sea and the sea-bed beyond the limits of national jurisdiction, it was vitally important that land-locked States should have a guaranteed right of transit and access to and from the sea. Although that right had been incorporated in international conventions and bilateral and regional agreements, and therefore qualified as part of positive international law, it was essential to embody it in any convention resulting from the Conference. Her delegation was heartened by the recognition of that right in paragraph 2 of the Declaration of the Organization of African Unity (OAU) on the issues of the law of the sea (A/CONF.62/33). That right in no way diminished the right of the transit States to their territorial sovereignty, and the modalities of enforcing it might be settled with the transit State concerned. However, special regard must be paid to the necessity of ensuring access to the sea for land-locked States that could not negotiate with hostile neighbouring transit States because of practical difficulties.

49. Her delegation realized the need for precision in the terminology employed in that regard. The term "transit State" had been defined to mean any State with or without a sea coast, situated between a land-locked State and the sea, through whose territory "traffic in transit" passed. Having regard to Zambia's experience—and she recalled recent attempts at economic blackmail by the illegal régime in Rhodesia—her delegation felt that, where there were existing or potentially viable alternative routes through several countries lying between a land-locked State and the sea, all such countries should be considered "transit States". The ultimate determinant as to what constituted a "transit State" might be prescribed in the new convention. In the event of a controversy, the test would be the indispensable standard of what, considering all relevant circumstances, was reasonable as between the parties. Failing agreement between the parties, recourse should be had to the dispute settlement procedure to be embodied in the convention.

50. The position of land-locked States meant that they must keep their options open. They should not be precluded from attempting to establish alternative routes to the sea through other States, even though they already had existing routes through one or more States. The right of free access to and from the sea-bed beyond the limits of national jurisdiction should also be assured in order to permit exploration and exploitation of the area on an equitable basis.

51. The future convention should also include provisions guaranteeing equal treatment with the nationals of coastal States in the ports of coastal States and in shore-based facilities for storage, handling, processing and marketing.

52. It was apparent that the situation was extremely unsatisfactory primarily on account of unilateral claims to a territorial sea ranging from 12 to 200 miles, and of the current definition of the continental shelf, which made coastal States dependent either on geographical considerations or on the limitations of technological capability. Further, every fresh encroachment on the high seas, which so far had been regarded as *res communis*, restricted the land-locked States' enjoyment of the area beyond the limits of national jurisdiction. Her delegation recognized that developing coastal States had suffered serious depredation through over-fishing by developed maritime nations and ran the risk of their off-shore hydrocarbon deposits being plundered in like manner. It was also aware that the physical security of a developing coastal State could best be protected by an adequate territorial sea and contiguous zone.

53. Motivated by a genuine desire for achieving harmony, and having regard to the real and pressing economic and security interests of developing coastal States, her delegation was prepared to support a 12-mile territorial sea and an economic zone, whose limits should not exceed 200 miles. Such support was based on the clear understanding that the rights and interests of land-locked States in that area would be adequately safeguarded.

54. It would have been more appropriate to establish economic zones regionally, but her delegation recognized the need at the Conference for a conciliatory approach. It urged other States in other geographical areas to follow the positive examples set by the African Heads of States in paragraph 9 of the OAU Declaration, which stated that land-locked and other disadvantaged countries were entitled to share in the living resources of neighbouring economic zones on an equal basis with nationals of coastal States, on a basis of African solidarity and under such regional bilateral agreements as might be worked out.

55. She believed that that entitlement to some extent mitigated the handicap of geography and also partially recognized the economic interests of developing and other geographically disadvantaged States. A just and equitable application of the principle of sovereign equality of all States set forth in Article 2, paragraph 1, of the Charter of the United Nations would, however, require that the nationals of such disadvantaged States should also be permitted to participate on a preferential basis in the non-living resources of neighbouring zones, in accordance with such regional or bilateral agreements as might be agreed upon. That indeed would be a step in the right direction.

56. In common with other developing countries, her delegation believed that the concept of the common heritage of mankind was the most basic principle of the future law governing the exploration and exploitation of the sea-bed and the ocean floor beyond the limits of national jurisdiction. Mankind's common heritage must be so interpreted as to ensure that an equitable distribution of benefits was derived from the exploitation of the international sea-bed area. Since the Declaration of Principles in General Assembly resolution 2749 (XXV) stipulated that particular consideration should be given to the needs and interests of developing countries, whether land-locked or coastal, the financial and non-financial benefits from the proposed Sea-Bed Authority should in large measure accrue in the foreseeable future to that group of countries. All States were bound in good faith to refrain from the exploration and exploitation of the international sea-bed area until an international régime was established, especially in the area which would constitute the landward limit of the international sea-bed area and the seaward limit of coastal State jurisdiction.

57. Zambia's mineral-oriented economy, like that of other developing countries, should be protected by binding international regulations which would neutralize any adverse effect from the exploitation of minerals in the sea-bed area. Owing to its geography Zambia had so far been excluded from participation in the benefits to be obtained from the living resources of the sea in the territorial sea and adjacent fishing zones, and the petroleum, gas and mineral wealth of the continental shelf. For the better protection of the special interests and needs of developing countries it was initially important that a strong autonomous International Sea-Bed Authority with operational and regulatory functions should be established. While the decision-making process of the Authority should adequately protect the interests of all States, the executive body of the Authority should reflect both the principle of equitable geographical representation and a proportionate representation of geographically disadvantaged States such as land-locked States. It would be in accordance with his delegation's philosophy of humanism and emphasis on a man-centred society if the many and varied interests striving for recognition at the Conference were reconciled in a spirit of goodwill, mutual accommodation and compromise.

Mr. Amerasinghe (Sri Lanka) took the Chair.

58. Mr. ADDERLEY (Bahamas) said that his country embodied in a microcosm most of the important issues which confronted the Conference. He would mention in particular the unique geographical situation of the Bahama Banks, which required a unique legal solution.

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59. As soon as it had achieved independence, the Bahamas had proclaimed its intention not to be bound by the obsolete 3-mile territorial limit, a legacy of the colonial situation, which, together with the Bahamian law enacted to establish a 12-mile fisheries zone, had created a mosaic of inconvenient areas of high seas, territorial seas, fishing zone, and internal waters, all subject to different legal considerations.

60. The entire area of land and sea over which the Bahamas claimed jurisdiction was approximately 100,000 square miles, approximately 94 per cent of which was sea, forming an intrinsic geographical entity and constituting an almost perfect archipelago, traversed by heavily trafficked shipping lanes. Between the islands there were few but narrow passages formed by the close proximity of the islands to one another, and the shallow non-navigable waters of the Bahama Banks, which necessitated the extensive use of lighthouses.

61. The land area of the Bahamas had no known mineral resources, but the islands, seas and marine life were no less important to the Bahamas than oil was to others. His country was therefore conscious of the absolute necessity for international agreement on matters of jurisdiction within the archipelago, the boundaries of the territorial sea, the limits of economic exploitation, the limits and extent of the control of pollution and the rights of passage.

62. Owing to the geophysical characteristics of the islands constituting his country, the Bahama Banks could not be regarded as high seas, in either the nautical or the legal sense. In 1951 the International Court of Justice had held that straight baselines might be drawn for territorial sea purposes from the outermost points of a coastline which was geographically exceptional.[4] That basic notion was designed for the peculiar situation of an iron-hard, rocky coast, whose features were immovable and therefore ever-constant. No court had applied the basic principle to the case of islands formed of limestone, whose features were inconstant.

63. In accordance with the principles of international law, the Bahamas had succeeded to many treaties which the United Kingdom had applied to it, including the Geneva Conventions, although in those Conventions the question of the archipelagos had not been solved. The special problem of archipelagos was that the sea-lanes which threaded them had some of the characteristics of international straits through which rights of transit existed. Special attention should be devoted to that problem, which was one of particular interest to the Bahamas.

64. His Government was the first to recognize that traditional freedoms of transit must be given proper priority. It was unfortunate that, in the Geneva Convention on the Territorial Sea and the Contiguous Zone,[5] the question of straits was mentioned in only an ancillary context, as an exception to the right of the coastal State to suspend passage in the territorial sea in times of emergency. That suggested that the right of passage in straits was contingent upon their waters being territorial waters and upon the passage being "innocent". It was certainly true that the passage of ships through straits should not be conducted in a way prejudicial to the security of the coastal State, but the notion of innocent passage through the territorial sea went further and allowed for the exercise of jurisdiction over passing ships, which had never been a traditional right in the case of straits. Consequently, there was an ambiguity in the existing legal text on straits, and if the new draft articles on straits were to be effective, they must command general acceptance.

65. It was possible that, at the end of the Conference, the situation with regard to the law of the sea would be one of confusion owing to the existence both of the Geneva Conventions and of a new treaty and the fact that some States might be parties to some of those instruments only or to none at all. Moderation was therefore necessary.

66. A country like the Bahamas, whose earnings depended on the clearness of its waters and the cleanness of its beaches, could neither risk the grounding of tankers and the discharge of pollutants nor expose the security of its islands to the unrestricted use of straits, nor be expected to bear the costs of maintaining the lighthouses which made its passages safe for international shipping.

67. With regard to the question of an international régime for the exploitation of the sea-bed beyond the limits of the continental shelf, the Bahamas was ready to give its support to the principle of the common heritage. The Bahamas accepted that, under customary international law, the area of national jurisdiction over the sea-bed was coincidental with the extent of the natural prolongation of the land, namely, with the continental margin.

68. However, determination of the limits of the continental margin was not easy and only became possible as a result of exploration activities, which needed to be regulated by law. If the law of the flag was to prevail, those requirements could be satisfied, but if territorial laws were to apply, a vicious circle might be created, since the law would apply only after exploration had established the limits, yet exploration would not be possible without the law. The same problem existed in the matter of internationalizing the deep sea-bed. A solution to the problem might be, of course, to adopt a fixed-distance limit for all sea-bed areas. That would, however, involve a complete departure from the principles which underlay the legal doctrine of the continental shelf and would therefore be a solution binding only upon those who agreed to it by ratifying the treaty. As in other areas, therefore, a spirit of compromise and moderation was required in order to achieve universal acceptance of the treaty. Under the law of his country, the boundaries of the Bahamas included the area of the continental shelf which lay beneath the sea adjacent to its coastline.

69. Even if a fixed-distance formula were agreed to, there would still arise the question of the sea-bed boundary with neighbouring countries. In the case of the Bahamas, a fixed-distance formula, if drawn from the low-water mark, would produce an unrealistic solution, given the existence of the Bahama Banks; at the same time the existence of islands and cays complicated the problem of delimitation, unless the baselines of an archipelago delineated the boundaries.

70. He reminded members that the current Conference, unlike the Conference for the Codification of International Law of 1930 and the Conference on the Law of the Sea 1958, was not a codification exercise, but a legislative one. However, the Conference was not a parliament, and a majority vote would not result in legislation. Only if the draft that emerged was clear, unambiguous and technically comprehensible to the lawyers who would have to interpret it would the outcome of the Conference be successful. Otherwise, the draft would not be acceptable and would give rise to further controversy. For that reason, a great degree of responsibility rested with the Drafting Committee, provided it was given clear and unambiguous directions and universally agreed principles with which to work.

71. Mr. MUNTASSER (Libyan Arab Republic) deplored the fact that invitations to attend the Conference had not been sent to the representatives of the liberation movements recognized by the regional groups; it was particularly regrettable that the representatives of the peoples of Angola and Mozambique and the Palestinian Liberation Front had not been invited. The position of the Libyan Arab Republic in that regard stemmed from its support for the peoples who were struggling for their political and economic liberation and from the need to avoid a recurrence of what had happened after the 1958 Geneva Conventions, i.e. a situation in which those organizations might some day claim that everything agreed upon at the current

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

[5] United Nations, *Treaty Series*, vol. 516, p. 206.

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Conference should be reviewed because they had not been represented.

72. Turning to the specific problems that the Conference was considering, he said that the Libyan Arab Republic had adopted the principle of 12 nautical miles as the breadth of its territorial waters, an area that it considered acceptable for the vast majority of nations.

73. His country was likewise in favour of establishing a zone adjacent to the territorial waters over which the coastal State would exercise supervisory rights and control in the matters of security, navigation and customs.

74. With regard to the economic zone, the Libyan Arab Republic agreed that recognition should be given to the right of the coastal States to establish a patrimonial sea extending for a distance of 200 nautical miles, in which the coastal State would exercise absolute sovereignty over all living and non-living resources, without prejudice to freedom of navigation and overflight and the laying of submarine cables and pipelines. In the case of adjacent or opposite coastal States the necessary agreements should be concluded so as to apportion the economic zones according to the prevailing circumstances.

75. His delegation believed that fishing on the high seas was being conducted unsystematically and unscientifically in a way that was directly harmful to fish stocks and would lead to their extinction. In addition, the greed of States owning large fishing fleets, and their defective techniques of exploitation, were having directly harmful effects on fishing in the territorial seas and economic zones of coastal States. His delegation therefore supported the establishment of an international régime empowered to decide on the principles and scientific procedures by which the exploitation and conservation of the living resources of the high seas would be regulated.

76. The Libyan Arab Republic considered that joint efforts should be made at every level, national, regional and international, to avoid pollution and to conserve the living resources of the sea. It also felt that States should enact legislation to protect their seas from the hazards of pollution.

77. The Libyan Arab Republic had passed laws for that purpose and considered it essential to delimit responsibilities in respect of pollution and to establish centres for supervision and control. In addition, States must be urged to accede to international agreements on environmental pollution control.

78. The Libyan Arab Republic considered that scientific research in the area subject to the sovereignty of the coastal State was the exclusive prerogative of that State and that scientific research in the area of the high seas should be subject to an international régime. However, the coastal States should co-operate in the scientific research activities carried on under that régime and should request the developed countries to offer the developing countries the necessary assistance in discovering marine resources, to make their experience available to the coastal States, and to provide training assistance.

79. His country approved the general principles agreed upon by the United Nations General Assembly at its twenty-fifth session in that regard, particularly resolution 2749 (XXV) containing the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction.

80. His delegation felt that participation in the international régime should be open to all and that every member should have a vote without regard to the amount of the capital it could contribute. Also, the composition of the executive council should take account of the principle of equitable geographical distribution. The Libyan Arab Republic sought the suspension of all exploration and exploitation activities which so far had been carried out on a unilateral basis, until the proposed international régime had been established, inasmuch as the seas and the oceans were the common heritage of all mankind.

81. In accordance with the geographical definition of the semi-internal or semi-enclosed sea, his delegation asserted that the wealth of those seas constituted the heritage of the coastal States. Ownership of that wealth should not, however, affect freedom of navigation through the waters of those seas, although they should be considered special areas where neither petroleum nor any other harmful substance should be allowed to be spilled. Since his delegation considered that the Mediterranean conformed to that definition, it maintained that the Mediterranean should be a sea of peace, free from any foreign fleets that might threaten the security and health of the coastal peoples.

82. In conclusion, his delegation wished to place on record its endorsement of the right of the Palestinian people to the land, sea and air of their homeland, particularly with regard to all aspects of the Palestinian coastline, the Dead Sea, Lake Huleh and Lake Tiberias. The Libyan Arab Republic maintained that any resolutions or agreements that might be adopted would not imply, either at present or in the future, acceptance of the situation prevailing on the Palestinian coast or territorial sea, the Dead Sea, Lake Huleh or Lake Tiberias because it felt that that situation was illegal and contrary to the principles and rules of international law, the Charter and United Nations resolutions.

The meeting rose at 6.15 p.m.

33rd meeting

Tuesday, 9 July 1974, at 10.45 a.m.

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

General statements (*continued*)

1. Mr. MALIKYAR (Afghanistan) said that the present Conventions on the law of the sea did not provide adequate protection for the rights and interests of all States on the basis of equality and justice. His Government attached great importance to the work of the Conference and had already expressed its views as a member of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction. His delegation would show the same spirit of co-operation and understanding at the present Conference as it had in the past.

2. Every effort should be made to broaden the areas of potential agreements on issues involving the interests of all States rather than insisting on a narrow interpretation of legal concepts which could cause unnecessary delays. Reasonable flexibility in the positions of participating States on some crucial issues could speed up the work of the Conference, which should precisely define the internationally agreed limits of both national and international jurisdictions.

3. His delegation would have preferred the Conference to adopt the principle of consensus in decision-making but considered the adoption of the rules of procedure by consensus