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37th plenary meeting

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37th meeting

Thursday, 11 July 1974, at 10.55 a.m.

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

In the absence of the President, Mr. Medjad (Algeria), Vice-President, took the Chair.

General statements (*continued*)

1. Mr. KEDADI (Tunisia) said that while the presence of almost all the world's countries and many intergovernmental and non-governmental organizations did enhance the universal character which the Third Conference wished to give to its deliberations and final decisions, his delegation profoundly regretted the absence of the authentic representatives of a sizable fraction of the world's population which included the peoples of South Africa, Rhodesia, Angola, Mozambique and Palestine. The authentic representatives of those populations had already been formally recognized by African and Asian regional organizations, and had been invited to participate in numerous conferences by the General Assembly and the Economic and Social Council. To follow those precedents would be in keeping with the spirit of the United Nations, and Tunisia was convinced that the next session of the General Assembly would approve a decision along those lines by the Conference. To act otherwise would be to stand in the way of progress and universality. If the convention eventually adopted by the Conference was to command universal authority and remain in force for several decades, the authentic representatives of all mankind must participate in its elaboration. Tunisia therefore urgently recommended the participation of the national liberation movements recognized by the African and Asian continental and regional organizations.

2. Tunisia's position at the Conference would be dictated by its adherence to the Declaration on the Issues of the Law of the Sea adopted by the Organization of African Unity at Addis Ababa in 1973 (A/CONF.62/33) and the resolutions on the law of the sea adopted by the Conference of Heads of State or Government of Non-Aligned Countries in Algiers in 1973.

3. Many problems facing the Conference arose from the great diversity of the geographical position of States and their differing degrees of development. Those basic factors were a source of inequality among States, but the international community had the duty to re-establish a balance which would ensure more fairness in the relations among peoples and nations.

4. The rights and obligations of States, as well as their interests and needs, differed according to the geographical category to which they belonged and their level of development. Harmonizing the many divergent interests was the mammoth task to which the Conference should bend its efforts so as to obtain the spontaneous and universal acceptance of its final act.

5. The Mediterranean region was characterized by rising levels of pollution, by limited and diminishing fishing resources, by mineral resources which, by virtue of their division among the different coastal States, were insignificant, and by a high level of shipping activities.

6. Tunisia was in favour of a certain amount of freedom of navigation in so far as it promoted international trade and brought nations closer together, but the use of that freedom should not result in damage to its national sovereignty, its fishing resources, or its infant tourist industry.

7. Such was, as he saw it, the position of straits States on the question of passage through straits. Those States were justified in their desire to ensure that passage through straits used for international navigation should not endanger their security or well-being and therefore wanted a régime of innocent passage.

8. His delegation believed that it would be wise for the Conference to establish new objective rules and criteria determining the nature of innocent passage which ensured the security of coastal States and the protection of their marine environment, and at the same time facilitated international navigation through straits.

9. Tunisia hoped the Conference would establish a territorial sea of 12 nautical miles. Tunisia had adopted legislation to that effect in 1972, but in doing so, it had kept in mind the economic and ecological concerns of those countries which supported the concept of an exclusive economic zone of up to 200 miles. Tunisia supported that new concept, as it did the concept of the archipelagic State. However, the nature and the limitation of the economic zone remained to be defined. Its proponents were, nevertheless, in agreement on three points: it should not extend beyond 200 miles; the competence of the coastal State should extend to the exploration and exploitation of the natural resources of the sea, the sea-bed and the subsoil thereof, pollution control, and the regulation of scientific research in the zone; freedom of navigation, of overflight, and of laying submarine cables and pipelines should be guaranteed.

10. In regard to fishing, the Tunisian delegation, like many others, favoured the exclusive sovereign rights of coastal States in relation to the management and exploitation of fishing resources, since protective measures of that nature were needed to protect its infant fishing industry and to prevent over-fishing which threatened certain species indispensable to the feeding of its population. To ensure the rational exploitation of the living resources of the sea, Tunisia was willing to conclude agreements with third countries for the creation of joint fishing companies. That kind of co-operation could be extended to the regional or subregional level by reorganizing and reinforcing already existing fishing organizations.

11. The line of equidistance should not be the only means of delineating the exclusive economic zone between adjacent or opposite States. Tunisia would suggest instead a line of fair-sharing which would take into account all special circumstances and relevant criteria, whether geological, geographical or geo-morphological. The presence of islands in the region of demarcation was one of those special circumstances. The determination of the maritime space of islands should take into account the area of the island, its population, its contiguity to the principal territory, its geographical structure and configuration, and the special interests of island States and archipelagic States. A growing number of delegations had expressed interest in that somewhat delicate problem, since if the relevant provisions of the 1958 Geneva Convention were retained, islands, reefs, and atolls would be accorded the same maritime space as the continental masses of States. If the 200-mile exclusive economic zone were accepted, and if an island was, as defined by the Geneva Convention on the Territorial Sea and the Contiguous Zone,[1] a natural stretch of land surrounded by water which was exposed at high tide, vast maritime spaces and the resources they contained would automatically be assigned to islands, reefs, and atolls, thus diminishing the content of the international zone.

12. In order to implement the concept of the common heritage of mankind, the International Authority should be vested

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

with wide powers. The international mechanism should concern itself above all with the equitable sharing in the benefits of the area and the rapid training of personnel from developing countries so that they might participate at all stages of management, exploration, exploitation and marketing of the mineral resources of the area.

13. Mr. JEANNEL (France) said that the Conference could well prove the most important since the San Francisco Conference of 1945. The law of the sea regulated a large part of the relations among peoples; without regulation those relations might be seriously affected, with harmful consequences for economic and cultural development, mutual understanding and peace. To retain its great importance the Conference must succeed in establishing a legal order acceptable to all States. If the eventual convention proved unacceptable for even a minority of States, the Conference would have failed in its mission. The efforts required for the completion of the overwhelming task facing the Conference would not bear fruit unless the Conference adopted sound working methods.

14. In his delegation's view, the problems should be arranged in groups. It had often been said that the law of the sea had been conceived by and for the maritime Powers. The truth was that the law of the sea had been established by the users of the oceans, who had felt a need for rules for the protection and development of their activities. But those rules did not protect only the rights of the maritime Powers to the detriment of other States. The Powers had been rivals and had also been concerned with their interests as coastal States. Those conflicting concerns had led in the nineteenth century to the striking of a balance between the rights of coastal States and the common interest by according the coastal States the right to exercise sovereignty over a narrow strip of sea then thought sufficient for the protection of their security and economic interests; in the common interest the right of innocent passage had been established within the territorial sea. It was also true that the existing rules had been drawn up by a small number of States. Thus, it would seem proper that the many new States should wish to examine the rules in the light of their own interests. However, the basic principles ensuring the reconciliation of the interests of individual States with those of international society must be retained, for they alone could preserve the necessary balance.

15. The traditional rules did not take account of the new activities born from the technological development which had taken place since the beginning of the twentieth century. Up to then, fish had been the main economic resource of the oceans; since then, the riches of the sea-bed and its subsoil had become accessible. In 1958 traditional law had been supplemented by the Convention on the Continental Shelf.[2] But techniques of exploitation were continually developing, and it seemed that the provisions of that Convention might permit an extension of the prerogatives of coastal States leading to a division of the resources of the sea, if not of the oceans themselves. That consideration had given birth to the noble idea of considering such resources as the common heritage of mankind.

16. At the same time, technological progress had disrupted the traditional conditions for the use of the seas. The growth of sea and air traffic and the enormous size of modern ships had increased the risk of accident and had transformed the underwater exploitation of hydrocarbons; the accompanying pollution posed a grave threat to the environment. Furthermore, improved fishing techniques had endangered the very existence of the living resources of the sea. The countries which saw such techniques being used along their coasts while they themselves were unable to exploit the resources experienced a feeling of frustration.

17. Turning to particular issues, he said that in his delegation's view the limit of three nautical miles for the territorial sea was no longer justified. His country had come out in favour of a limit of 12 nautical miles from the baselines, which seemed sufficient to safeguard the security of the coastal States while protecting the interests of international society. A territorial sea of 12 miles seemed the largest area over which the coastal State could exercise the control essential to its sovereignty. That sovereignty would remain subject to the right of innocent passage as traditionally defined. However, since that right could be suspended and the determination of the innocent nature of the passage left partly to the discretion of the coastal State, it was not sufficient for the protection of the interests of other States in straits used for international navigation. Such straits must therefore be covered by a right of free transit not dependent on the coastal States.

18. Since State sovereignty was indivisible, it was exercised in the same way over all the lands subject to it. It was not therefore possible to make a distinction between continental and insular territories. A sovereign State which was an island had the same right to a territorial sea as to its other territories. The problems of delimitation between neighbouring or facing countries must be solved on the basis of equity by bilateral arrangements. The same principle should be applied to the economic zone. He noted in that connexion that the 1969 decision of the International Court of Justice concerning the continental shelf in the North Sea[3] proposed adequate legal guidelines for the solution of disputes.

19. His delegation thought that sympathetic consideration should be given to the special problems of archipelagos and that solutions should be found which were satisfactory to the Governments concerned. The solutions should not however hinder the freedom of communications over a large area of sea.

20. Within the framework of the status of the high seas, it now seemed necessary to grant the coastal States certain economic rights with regard to the mineral and living resources of the sea beyond the 12-mile limit. As to mineral resources, the nature and scope of the rights established in the 1958 Convention on the Continental Shelf should be confirmed and the areas in which they could be exercised should be defined. For reasons of simplicity and of fairness to the countries lacking a continental shelf, a distance criterion should be used. His country favoured a limit of 200 nautical miles from the baselines. The problem of living resources must be approached with greater flexibility because of the complex nature of the resources themselves and the method of exploiting them. The solution should be based on the following principles: the coastal State must control the living resources in a wide area beyond its territorial sea; full account must be taken of the problem of the conservation of species important to mankind as a whole; since the solution of the problem depended on data which varied according to species and region, it could not be universal; the establishment of a right of ownership over the resources before they were caught was difficult because of their mobility, particularly in the case of migratory species; the under-exploitation of the resources constituted a loss which could not be tolerated when many peoples were undernourished; ocean fishing, which provided a livelihood for small businessmen, must be protected.

21. In their economic zones States should have special rights with respect to the prevention of the pollution of their coasts. Since pollution knew no frontiers, individual States would not be able to determine the necessary regulations unilaterally. That could be done only at the international or regional level. The regional level seemed particularly suitable in the case of pollution not caused by transport, but universal regulations should apply when ships or aircraft were the source of the pollution. The Inter-Governmental Maritime Consultative Organization and the International Civil Aviation Organization seemed the bodies best equipped for drawing up the necessary

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

[3] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 3.

rules. A particular problem was that the principle of the exclusive jurisdiction of the State of registration gave that State alone the authority to compel the ships and aircraft of its registration to observe the rules. That principle must be retained, for it alone safeguarded the freedom of communications. But it did leave the coastal State without means of protection in the event of negligence by the flag State. The coastal State must therefore be allowed to intervene to ensure that the regulations were observed, and his delegation proposed two exceptions to the principle: a coastal State must have the power to establish the offence and draw up a report which would be valid in the courts of the flag State; it must then be permitted to prosecute and punish the offender if the flag State did not do so.

22. Turning to the area of the seas beyond national jurisdiction, he said that the Conference should base its approach on the principles set forth in resolution 2749 (XXV). Those principles fell into two categories: the first provided the bases for solutions and the second dealt with the means of applying them. There were four principles in the first category: the seabed and ocean floor and the subsoil thereof were the common heritage of mankind and should not be subject to appropriation by States or natural or juridical persons. All activities regarding exploration and exploitation must be exclusively for peaceful purposes and governed by an international régime which should not affect the superjacent waters but should ensure the orderly and safe exploitation of the resources. The exploration and exploitation should be carried out for the benefit of mankind as a whole, including the land-locked countries, and taking into particular consideration the interests and needs of the developing countries. Under the conditions laid down by the régime, States would carry out such exploration and exploitation, and share equitably the benefits derived therefrom, taking into particular consideration the interests and needs of the developing countries.

23. The second category included two principles to be observed by States in the exercise of the rights accorded them by the basic principles. They should promote international co-operation in scientific research exclusively for peaceful purposes and they should co-operate in the protection of the marine environment. The resolution also provided for the establishment of an international machinery to give effect to its provisions. The role of that machinery derived logically from those principles. An international organization of the traditional type should be established to ensure the fair distribution among States of exploration and exploitation zones and to oversee the application of the régime.

24. With regard to the question of scientific research, there should be as few obstacles as possible to such research and it should be carried out in the best conditions compatible with the legitimate interests of States and the users of the sea. Scientific research over extensive areas would involve considerable human and financial resources and would require international co-operation.

25. A distinction must be made between "open" scientific research carried out for the common good and research undertaken for economic or commercial purposes. The following comments applied only to the former. In the territorial sea research should be subject to the consent of the coastal State. For the zones under national jurisdiction, the principles of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone were a satisfactory starting point but needed to be improved in the light of current practice and of the efforts of international organizations to promote scientific research. Beyond the zones of national jurisdiction, research should remain free, subject to the precautions required for the protection of the environment. Scientific research should bring considerable benefits to the developing countries, which should have access to the results of the research. In addition, the transfer of technology was also of very great importance. The solution to the problem was closely linked to the problem of the exploitation of resources.

26. As far as pollution was concerned the Conference should limit itself to the adoption of basic principles which should be translated into law by bodies better equipped technically for that purpose, and to the solution of problems related strictly to the law of the sea, such as the respective jurisdictions of the flag State and the coastal State. Appropriate provisions could in fact be drawn up only in the light of specific data which were not available to the Conference and which, in any event, varied in different parts of the world Even if all delegations had properly qualified experts, the completion of such a complicated task might considerably delay the essential work of the Conference.

27. His delegation thought that in the consideration of some questions account should be taken of the concerns of land-locked or semi-land-locked countries. Application of the principle of the common heritage of mankind should enable those countries to be compensated for the disadvantages due to their geographical situation. The practical difficulties faced by land-locked countries should be overcome by pragmatic solutions, especially at the regional level.

28. He wished to comment briefly on the vital question of the peaceful settlement of differences. No regulations could be susceptible of only one interpretation, especially in the manner of their application. Thus, it was essential to provide means for the settlement of disputes. At the internal level, that work was done by the courts, which had a general and exclusive jurisdiction from which no one could escape. However, the adoption of a similar solution at the international level was clearly not compatible with the sovereignty of States. On the other hand, States might be willing to submit specific disputes to a mandatory settlement procedure. The Conference should set aside the notion of a court with general jurisdiction and think in terms of a series of procedures established *ratione materiae*. Such a solution would have the advantage of permitting recourse to qualified experts who would be most likely to consider cases objectively since they would be viewing them from a technical point of view; there would be no risk of having decisions based on considerations foreign to the dispute.

29. In conclusion, he pledged that his delegation would do everything it could to help to bring the work of the Conference to a successful conclusion in a spirit of mutual understanding. As the representative of the country at present occupying the presidency of the European Economic Community, he affirmed that his delegation would be working in co-operation with the States members of the Community.

30. Mr. AL-SAUD AL-SABAH (Kuwait) said that the preparatory work for the Conference had provided it with the necessary background for constructive decision-making. The law of the sea as it existed was inadequate since it was not unified. The paramount aim of the Conference was to formulate one single convention encompassing all aspects of the law of the sea which would create a proper balance between the various interests of the members of the international community.

31. The Conference should begin by establishing the maximum breadth of the territorial sea. Despite past failures to reach agreement on that point, there were favourable signs that the Conference would be able to resolve that issue. Kuwait favoured the 12-mile limit as the best possible compromise on the maximum breadth of the territorial sea.

32. If the 12-mile limit for the territorial sea were adopted, a number of straits would fall within the jurisdiction of coastal States. While the right of innocent passage had been adequate to protect navigation through the territorial sea, it was not practical in the case of straits, since the innocence of passage was subjectively determined by the coastal State. The freedom of transit for merchant ships through straits used for international navigation should be guaranteed at all times, while

different criteria should be applied to warships to protect the safety and security of the coastal State. The treaty articles to be adopted concerning straits used for international navigation should not in any measure detract from the provisions of the United Nations Charter pertaining to the right of self-defence and national security.

33. In regard to the continental shelf, Kuwait considered the 1958 Geneva Convention on that subject to be satisfactory on the whole. The exploitability criterion, however, clearly conflicted with the concept of the common heritage of mankind in that it gave the coastal State sovereign rights over the sea-bed and subsoil in the submarine areas adjacent to its coasts so long as the depth of the superjacent waters admitted the exploitation of the resources of these areas. With improvements in technology, coastal States would be able to exercise sovereign rights over increasingly wide areas. Thus if the concept of the common heritage of mankind was to become a reality, a definition of the outer limit of the continental shelf was urgently needed. The depth criterion recognizing the exclusive sovereign rights of the coastal State to the sea-bed and subsoil thereof to a depth of 200 metres outside the limits of the territorial seas should be retained, while the exploitability criterion should be discarded. For those coastal States disadvantaged by the application of the depth criterion alone, a supplementary distance criterion could be applied.

34. Kuwait upheld the provisions of article 6 of the Convention on the Continental Shelf with regard to the delimitation of the continental shelf between adjacent States.

35. Because of the large number of unilateral declarations relating to fisheries, there was a lack of uniformity in the fishing practices of States. Such unilateral declarations on fisheries could create serious conflict between neighbouring countries, cause considerable hardship to land-locked and other geographically disadvantaged States, and, being contrary to the principles and norms of international law, could not be granted recognition.

36. His delegation realized that the sea had always been an important source of food and that most countries would soon be capable of building better and larger fishing fleets. All States should be allowed to satisfy their animal protein requirements from the resources available in the sea and they had an equal interest in conserving those resources; thus, it was desirable to maintain the total yield from a stock at a high level. Existing conservation arrangements were not satisfactory; they were confined to a few States which were more interested in deciding what share each would take than in maximizing the total yield. The international community should devise a universal arrangement to prevent the depletion of living resources and determine the allowable catch. Only universal conservation measures could be effective. His delegation welcomed the suggestion that fisheries commissions should be established in enclosed and semi-enclosed seas to serve the interests of all the coastal States in a particular region.

37. Scientific research created a dichotomy between the interest of the international community in expanding its knowledge of the sea and the interest of the coastal State in ensuring that the activities conducted near its shores complied with established safeguards and rules. A distinction might usefully be drawn between research conducted by national and international institutions, with less stringent rules applying in the latter case. International institutions should train nationals from the developing countries to be able to make a contribution to the cause of scientific knowledge. All nations must be given access to the knowledge yielded by scientific research.

38. Both short-term and long-term solutions were needed for the problem of pollution. He commended the work of the Inter-Governmental Maritime Consultative Organization and hoped that the Third Committee would be able to integrate that organization's contribution in the articles on pollution. His own country had suffered from the pollution of the sea by oil and was looking forward to acting as host for a conference on pollution to be held in October 1974. Although the conference would be confined to the States of the area, its purposes were universal.

39. Turning to the question of the régime in the area beyond the limits of national jurisdiction, he said that his delegation envisaged the régime as an integral whole and the international machinery as an indivisible part of it. The treaty concerning the régime should be open to all States and it should prohibit reservations incompatible with its purposes. The régime should be something more than a law-making treaty in the sense of the Geneva Conventions. It was impossible to contemplate a régime for the sea-bed to which some States were parties but which others were free to disregard. He noted that the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction[4] stated specifically that the régime should be generally agreed upon.

40. The time had come to define the limits of the area to be subject to the régime in a manner that would do justice to the concept of the common heritage of mankind. The aim should be to establish the largest possible international area to be administered by an international machinery with the broadest possible powers. His delegation believed that the international machinery should be an autonomous, universal organization within the United Nations system. It should be able to conclude agreements with Governments and international organizations. It should be responsible for ensuring that the resources of the sea-bed were rationally exploited for the benefit of mankind as a whole, taking into account the special needs of the developing countries, and for ensuring the equitable sharing of the benefits derived from its exploitation of the resources of the sea-bed. The machinery should have broad regulatory and operational functions and its scope should be co-extensive with the régime and the area it governed. It should avoid creating gluts on the world markets which depressed the economies of the developing countries, especially those dependent on one commodity.

41. In conclusion, he drew attention to the predicament of peoples which were denied their inalienable right to self-determination and independence and their fundamental civil and political rights, and had been forcibly deprived of the status which would allow them to be subject to international law. His Government, which had consistently championed the cause of freedom everywhere and supported the struggle of the oppressed peoples, demanded that all liberation movements, including the Palestine Liberation Organization, should be represented as observers at the Conference. That was the least the Conference could do to make them feel that even if they were not recognized as independent and sovereign States, they were at least worthy members of the family of nations.

Mr. Van der Essen (Belgium), Vice-President, took the Chair.

42. Mr. BAKULA (Peru) said that the main purpose of the Conference was to replace the present law of the sea, which had been established by a limited number of Powers to further their economic, political and military interests, by a new legal order which would ensure that the seas were used as an instrument of justice, peace and well-being for all nations in the world. As General Velasco Alvarado, President of Peru, had said, his country was in need of radical change to give the people of Peru a just social system. That was what had led the Government of Peru to make far-reaching changes in the traditional institutions relating to the law of the sea, in line with the demands of justice and the interests of the countries of the third world, and to defend the principle of the sovereignty and jurisdiction of the coastal States over their adjacent sea and the soil and subsoil thereof up to a distance of 200 miles. It had

[4] General Assembly resolution 2749 (XXV).

adopted that position because it was conscious of an age-old responsibility—that of protecting rights that were vital to the development of those countries. Like several previous speakers, he wished to draw attention to the role played by developing countries which, by laying claims to rights over the coastal seas up to a limit of 200 miles, had laid the foundation for a doctrine now shared by a majority of States. It was an important development that several nations which had formerly opposed that concept were now ready to accept it, even though there were substantial differences in their interpretation of the principle.

43. His Government's position was that the zone within the maximum limit of 200 miles should be subject to the sovereignty of the coastal State in order to ensure the protection of its legitimate interests. Sovereignty over that zone was a necessary corollary of the State's duty to provide for its survival and development by using its natural resources in accordance with reasonable criteria that took account of its geographical, geological, ecological, economic and social conditions. That imperative duty was reflected in a right for which it was entitled to demand respect from other States; but, at the same time, it recognized that the States opposite its own coast had equal rights and duties, just as it recognized that all peoples had an interest in protecting the freedom of international communications. The control of the coastal State was essential to the conservation and exploitation of renewable and non-renewable resources, the preservation of the marine environment, the control of scientific research and the emplacement of installations, as well as other economic and related uses.

44. It had been said that the recognition of those rights hampered international communications. But Peru, like other countries which had adopted those limits, strictly respected *jus communicationis* and facilitated navigation, transport and communication in general as instruments of peaceful coexistence and co-operation between States.

45. It was clear from the explanations he had given that the countries that favoured a patrimonial sea or an exclusive economic zone up to 200 miles in breadth had the same basic viewpoint as his own and were defending the same interests. He was sure that an understanding could be reached through the recognition of the sovereign rights of the coastal States over the sea and the sea-bed and the subsoil thereof under their national jurisdiction, without prejudice to the freedoms of international transit that was important to all countries.

46. Some of the maritime Powers, realizing that the preferential rights approach no longer had any possibility of success, had changed their strategy and declared themselves ready to accept a 200-mile economic zone, provided that the coastal States renounced certain essential rights and submitted to restrictions which would transform them into mere spectators or executors of the decisions of other States, based on standards established by international bodies which primarily respected the so-called historic rights of other States. They would be obliged to give up a percentage of the revenues derived from the exploitation of non-renewable resources and would have to guarantee the security of foreign investments in the area. They would be unable to adopt special measures for the protection of the marine environment but would have to ensure compliance with limited standards agreed upon internationally. The same would apply to artificial installations off their coasts and to scientific research, which would not be subject to their authority. They would have to allow inspection and supervision by an international authority and disputes arising from the interpretation and application of those provisions would be resolved not by their own courts but by arbitration commissions or other forms of procedure provided for in the convention. The coastal State would also have to ensure the exercise by other States of other uses of the sea, without restrictions of any sort, as if it had no rights in that zone.

47. It was therefore obvious that the peculiar institution described as a "non-exclusive economic zone" was in essence an "international economic zone" completely different from the zone of national jurisdiction advocated by progressive nations.

48. The maritime Powers also laid down certain conditions as part of the "package deal": a 12-mile limit for the territorial sea; free transit through straits used for international navigation and in archipelagic waters; traditional freedoms on the high seas; and a licensing system to enable companies from highly developed countries to explore and exploit the international zone of the sea-bed at will.

49. On the question of the common heritage of mankind, there were two radically different approaches. The majority were in favour of the International Authority itself carrying out the exploitation of the area and other related activities as the only way of ensuring that the so-called "common heritage" should be shared between all nations, irrespective of their degree of development. On the other hand, the industrialized countries favoured the licensing system, which would reduce the role of the developing countries to a mere collection of dividends. The compromise proposed by some developed countries which consisted in allowing both the International Authority and other juridical persons to exploit the resources of the sea was neither desirable nor practicable. The essence of the International Authority was its exclusive nature. Its essential purpose was to cater for the needs of the peoples, however small the country, of the international community in accordance with the notion of service rather than profit, since the property to be administered was social and universal. The ideas of international social property, service rather than profit, a co-operative system, full participation by all States, and democratic management and control constituted the firmest guarantee that the common heritage of mankind would really benefit all peoples, in other words, the whole human race. It was therefore indispensable to ensure the equal participation of all States in the assembly of the Authority, as well as their adequate representation in the council. All that presupposed the respect of the provisions of the 1970 Declaration of Principles and the resolutions of the General Assembly to the effect that the exploitation of the area might be carried out only in conformity with the régime to be established and that national and transnational firms would not appropriate those resources, as they seemed determined to do.

50. The maritime Powers, by resorting to the veto under the guise of consensus or threatening not to sign the convention, would try to persuade States to renounce or reduce their rights and aspirations and to sow discord among the developing countries, as if their interests were irreconcilable.

51. The new philosophy of the law of the sea would be inconsistent with the principles of justice and welfare upon which it was based if they were not applied to the land-locked and other geographically disadvantaged States. Peru considered that the land-locked countries should enjoy free access to and from the sea, free transit through neighbouring coastal States and equality of treatment in the latter's ports It also considered that the land-locked countries and other geographically disadvantaged countries should participate in the usage and resources of the sea as well as in the benefits obtained from the exploitation of the sea-bed. Modern society, controlled by financial, economic and political power centres, had brought extraordinary material progress, to the detriment of human values. The developing countries had been obliged to combat the maritime Powers' control of the sea, formerly exercised through finance, transport and markets and recently through science and technology. The third world countries trusted that their claims for justice and equality would receive the same support at the present Conference as they had in various United Nations forums over the years.

52. The profit-seeking of multinational companies was the reason for the maritime Powers' insistence on reduction of the

economic zone, and their demands related to straits, occupation of canals or so-called strategic nuclear tests. The basis of that policy was, as in the past, the preparation for a possible war. The peoples of the third world, on the contrary, wanted solutions based on peace, justice, good-neighbourliness and international co-operation, in order to ensure full development for their countries and their inhabitants.

53. Present-day Peru was proving that a new form of society could be based on those values. Social justice and respect for human dignity were not bounded by frontiers but should prevail throughout the world in accordance with the principles of the United Nations. It was therefore essential that highly developed countries should respect the few areas of fishing wealth that had survived depredation. It would be logical and just for all goods to be placed on the common table if a new order of equity were to be established. Peru would not falter in its defence of its maritime sovereignty, which was indispensably linked to the development and welfare of its people, but was, as always, ready to seek reasonable solutions which would meet with universal agreement on the basis of justice and mutual respect.

54. Mr. BELLIZZI (Malta) reminded the Conference that it was Malta that had first raised the question of the sea-bed in the General Assembly and that it had since become closely identified with the development of a new legal order for ocean space. Like other small States entirely surrounded by sea, Malta had a vital interest in the surrounding waters. A people which extracted its livelihood equally from the resources of its limited land area and from its surrounding waters could not justly be denied exclusive jurisdiction over those waters. Few States of a total land area of barely 122 square miles supported a population of almost one third of a million and fewer still were utterly devoid, like Malta, of all land-based mineral resources. In Malta, even fresh water was scarce and, when the energy situation permitted, it was forced to distil large quantities of sea water.

55. The sincerity and frankness of the statements in the general debate had heightened the hopes and expectations with which his delegation had come to the Conference. Some delegations' changes in position regarding certain important issues indicated a positive dynamism in the approach of many participating States.

56. One of the concepts which had gained wide acceptance was that of the 200-mile economic zone in which the coastal State would exercise sovereign rights over the natural resources. His delegation had been the first to propose a maximum limit of 200 miles as a uniform demarcation line between national and international areas of ocean space and had no difficulty in accepting the concept of an exclusive economic zone. Although the breadth of the Mediterranean was nowhere such as to allow for a full 200-mile zone, his delegation supported that maximum limit as the one best suited for universal application. The concept of the continental shelf should be absorbed by that of the economic zone. His delegation also appreciated the arguments put forward in favour of regional arrangements that would provide access to the living resources of that zone by other States in the region, including land-locked States.

57. Owing to its vulnerable position at the crossroads of a busy and virtually enclosed sea, Malta was vitally concerned about the problem of marine pollution, not only because of its effect on the tourist trade but also in the wider context of the preservation of the marine environment, which was particularly essential in the Mediterranean, whose living resources were at best meagre. His country's position on that important issue was based on the Declaration of the United Nations Conference on the Human Environment[5] and it looked to the United Nations Environment Programme to safeguard the seas from the scourge of pollution, especially land-based pollution. It was vitally important that the Conference should elaborate adequate and effective international standards to combat marine pollution as well as measures for their universal enforcement. In especially vulnerable areas, such as enclosed and semi-enclosed seas, provision must be made for even more stringent standards, preferably in the context of regional arrangements.

58. His delegation reaffirmed its belief that an effective international régime provided the only hope of avoiding the inevitable escalating tensions caused by the development of technology and gave the best assurance that the resources on and under the ocean floor would be exploited with harm to none and benefit to all. The Authority should exercise the jurisdiction entrusted to it as a trustee for the international community, based on the principle of sovereign equality of States. It must be flexible enough to be able to assume additional responsibilities in the future should the need arise.

59. His delegation still believed in the principle which had guided its approach to the issues before the Conference, namely that of an equitable balance between the interests of the coastal States and those of the international community, but it realized that there might be more than one way of attaining it. The path indicated by Malta in the past remained open, but his delegation would not be acting as guides. It must be borne in mind that any effective and lasting solution must take full account of the diverse and special interests involved. The success of the Conference depended on the conclusion of a treaty acceptable to all, even though it could not possibly satisfy all individual aspirations.

The meeting rose at 1.25 p.m.

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

38th meeting

Thursday, 11 July 1974, at 3.45 p.m.

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

General statements (*continued*)

1. Mr. O'BRIEN KOKER (Gambia) said that Gambia, a riverain and maritime country, possessing no known deposits of minerals, had a Sahelian economy predominantly dependent on agriculture, supplemented by the living resources of the rivers and the sea. It therefore undoubtedly was among the geographically disadvantaged countries; however, because of its moderate climate and beautiful Atlantic beaches, the Government was attempting to develop tourism. For those reasons, Gambia attached great importance to the Conference.