Third United Nations Conference on the Law of the Sea

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

Document:-
A/CONF.62/ SR.42

Summary Records of Plenary Meetings
42nd plenary meeting

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

and hoped that a solution mutually acceptable to the archipelagic countries and the rest of the world would be found encompassing a clear and precise definition of the archipelagic concept, safeguards for navigation, and adequate provisions for conventional uses of the sea—such as fishing and the laying of submarine cables and pipelines.

48. Because of the inherent differences in the nature of mineral and living resources of the sea, different régimes should be applied to their exploration and exploitation. The extent of the sovereign rights of the coastal State for the purpose of exploring and exploiting the mineral resources of the sea-bed should be clearly defined in accordance with a distance criterion permitting the coastal State freely to determine that distance which should not exceed 200 nautical miles.

49. There was a clear and growing need for international co-operation in the conservation and management of the living resources of the sea and in the creation of a system of just and equitable distribution or allocation of those resources. Regional fishery commissions provided one example of such international co-operation, and Japan favoured any proposal aimed at increasing the role of international or regional bodies in the promotion of wise and effective conservation and management of the resources of the sea. With regard to fishing, Japan had consistently expressed its opposition to any claims by coastal States to exclusive rights over fishery resources in a zone extending far beyond the limits of the territorial sea, since such claims benefited the limited number of countries having fertile fishing grounds off their coasts at the expense of all others.

50. With respect to the economic zone, there was a growing awareness among the delegations of the need to avoid underutilization of fishery resources and to provide for a proper accommodation of the interests of land-locked or otherwise geographically disadvantaged States and distant-water fishing States within the bounds of scientifically established measures for conserving fishery resources. Some delegations stressed in this regard that the new rights of the coastal State must accompany balancing obligations or that the fish not utilized by the coastal State should be open for access by nationals of other States. His delegation had carefully listened to these suggestions and considered it of utmost importance that the interests of traditional fishing countries like Japan had to be respected in the future convention on the law of the sea.

51. With regard to the question of anadromous fish, Japan did not agree that management and exploitation of those species should remain exclusively in the hands of the coastal States in whose rivers they spawned. Existing regional fishery commissions had dealt with the question of conservation and management of those species for many years, and the resolution of that question should be left to the small number of countries directly involved.

52. The new international régime for the sea-bed beyond the limits of national jurisdiction could promote the welfare of all nations by providing for equitable sharing of the benefits to be derived among all members of the international community, taking into account the special need of developing States, land-locked and other geographically disadvantaged States. Other means for achieving that goal included effective participation by such States in the development of deep sea-bed resources through the transfer of technology from the technologically advanced States to the developing States and an appropriate system of an annual quota of the licences to be issued to each State by the Sea-Bed Authority. Provisions to that effect should be included in the Convention.

53. With regard to marine pollution, the international community as a whole had an interest in preserving the marine environment. Japan was ready to co-operate in any way to achieve that goal. The standards to be applied for the prevention of ship-based pollution should be internationally agreed on and accepted. Japan supported the traditional principle whereby the flag State was primarily responsible for enforcing pollution control standards. However, in order to protect the legitimate interests of the coastal State, the coastal State or the port State could be granted a degree of qualified competence in cases of violation of those international standards with respect to discharge and dumping in the areas off its coast. Those international standards and the system for their enforcement should facilitate the prevention of marine pollution without causing undue restriction to the freedom of navigation. With regard to pollution, the concept of a so-called "specially vulnerable area" merited careful examination by the Conference.

54. Japan attached great importance to the establishment of a satisfactory procedure for compulsory settlement of any disputes which might arise out of the interpretation or application of the new convention. The duty of States to submit such disputes either to arbitration or judicial settlement should be clearly formulated in order to ensure that the newly established régime would be interpreted and applied uniformly and in a fair and just manner around the world. The International Court of Justice should naturally have a major role in that respect, but in view of the diverse and often technical nature of the problems of the sea, there might be a need to establish special tribunals or commissions to which States would be obliged to submit disputes and whose decisions would be binding on the parties to a dispute.

The meeting rose at 1.10 p.m.

42nd meeting

Monday, 15 July 1974, at 3.20 p.m.

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

In the absence of the President, Mr. Kazemi (Iran), Vice-President, took the Chair.

General statements (*continued*)

1. Mr. ARSENIS (United Nations Conference on Trade and Development) said that the Secretary-General of UNCTAD greatly regretted his inability to be present owing to pressing commitments.

2. The Conference encompassed issues of great importance and considerable complexity, particularly that of the exploitation of mineral resources beyond national jurisdiction, an issue that had been the subject of intergovernmental discussions and secretariat studies within UNCTAD.

3. It was now generally agreed that the greater availabilities and presumed lower costs associated with the production of minerals from the sea-bed would bring benefits to the world as a whole. The central question that arose in that connexion was: how would those benefits be distributed among the member States?

4. The General Assembly had recognized that those new resources were the "common heritage of mankind" and that they

were available for exploitation by or on behalf of the international community "for the benefit of mankind as a whole, taking into particular consideration the special interests and needs of the developing countries". The task before the Conference was to render that broad conceptual framework operational by establishing practical arrangements for the exploitation of sea-bed resources.

5. For some time the world community had recognized the need for concerted international action to underpin the development of developing countries, and to reduce the economic gap between the developed and the latter countries. The Second United Nations Development Decade was a clear reflection of the resolution of the international community to accord to the question of development a priority second to none. It would be logical, therefore, to expect that the exploitation of sea-bed resources beyond national jurisdiction would be organized in a manner that would ensure maximum income benefit for developing countries and effective participation, on a preferential basis, by those countries in the production, processing and marketing of the output. Recent developments had clearly illustrated that existing commodity trade arrangements were inadequate and that the prices that remained too low for too long endangered future supplies. There was now a greater awareness of the convergence of interests of both producing and consuming nations and consequently of the need for a new strategy that would meet the legitimate needs of consuming countries for assured supplies, and of producers for greater earnings and assured markets; both consumers and producers had an interest in an orderly price situation and in the rational exploitation of non-renewable resources.

6. The sixth special session of the General Assembly had recognized the need for a comprehensive approach to commodities of export interest important to developing countries. In pursuance of the Programme of Action on the Establishment of a New International Economic Order (resolution 3202 (S-VI)) adopted by the General Assembly, work was under way in UNCTAD with a view to formulating a new commodity strategy that would encompass several commodities. It appeared that the new strategy would need an approach more multidimensional in character than had previously been adopted. While there would be a continuing need for arrangements covering specific commodities, such arrangements could be worked out in the context of a wider framework of principles and guidelines. Those might include, where appropriate, arrangements for buffer stocks which were based not on one but on several commodities, supported, for example, by a central fund. They would also need to include not only price stabilization measures, but, in addition, measures in the fields of marketing and distribution; the assurance of adequate supplies; the linking of prices of commodities to the prices of manufactured goods; and the provision of finance for distribution and for new investments for processing those products in the developing countries which produced them.

7. It was clear that the new supplies that would come from the exploitation of sea-bed resources would have to be taken into account in working out a comprehensive commodity strategy. The question that arose was how those resources should be managed so as to obtain an appropriate balance between the objective of maximizing the net income of the proposed International Sea-Bed Authority and the objective of obtaining remunerative and equitable prices for the land-based producers of minerals. The question assumed increased importance because the developing countries were the main suppliers to world markets of most of the minerals likely to be exploited from the sea-bed in the early future. That particular aspect of the problem had received attention in UNCTAD at both the intergovernmental and secretariat levels as a result of a request in General Assembly resolution 2750 (XXV), supplemented by resolution 51 (III), adopted by UNCTAD at its third session, and UNCTAD had prepared reports on the subject which were reproduced in document A/CONF.62/26.

8. It could be assumed that, if normal commercial criteria were to guide the production of minerals from the sea-bed, one important result of such exploitation would be that it would bring direct benefits to the consumers of the minerals who were, by and large, the mineral-using industries in developed countries. As so often happened in primary production, the productivity gain which resulted from technical progress and made lower-cost sea-bed production possible would largely be passed on to the consumers in the form of lower prices.

9. On the other hand, the chief consequence of sea-bed production for land-based producers of the minerals concerned would be that their total export earnings from those minerals would grow less rapidly than they would have done otherwise, and in some instances might even decline from previously achieved levels. For example, the UNCTAD secretariat's case studies relating to three of the minerals concerned—cobalt, manganese ore and copper—indicated that, with a very modest volume of sea-bed output in 1980, the export earnings of the developing countries in that year would be lower by $360 million than without sea-bed mining.

10. It also seemed that the net income likely to accrue to the proposed International Sea-Bed Authority would fall short of the potential export earnings forgone by established developing exporting countries as a result of the introduction of sea-bed mining; if so, it would be insufficient to compensate those countries for their loss of potential export income, and no funds would be available for the benefit of other developing countries, including the land-locked developing countries. Thus it appeared that, in the absence of special arrangements to protect the interests of developing countries, the availability of minerals from the sea-bed, while contributing to world development, might also result in a widening of the income gap between developed and developing countries. There was therefore an imperative need for the international community to make firm arrangements in advance of the production of minerals from the sea-bed in order to ensure that such activity would not adversely affect the interests of developing exporting countries, or, even better, would bring positive benefits to them and to other developing countries. If the international community decided to adopt the compensatory approach to the problem of protecting the trade interests of developing exporting countries, it would be necessary to ensure that the shortfall in the required amount of financial compensation was made good by developed consuming countries and/or by the international financial institutions. In that way a due share of the economic benefits flowing to consuming countries would be transferred to compensate for the loss of potential earnings of developing countries and to provide benefits to other developing countries.

11. An alternative approach to the problem would consist essentially of arrangements to ensure that output from the sea-bed would not result in prices which were not equitable and remunerative to reasonably efficient developing countries which were established producers of the minerals concerned. For that purpose it would be necessary that the rate of production from the sea-bed, or the rate of disposal of such output, or the selling prices or related terms of its disposal, should be strictly controlled by the proposed International Authority, in order that the market prices for the minerals concerned would not be depressed below levels declared by the international community as remunerative and equitable. Thus, appropriate arrangements might involve the setting of floor selling prices in respect of output from the sea-bed. Moreover, if the interests of established producing countries were protected through the setting of minimum selling prices for sea-bed minerals at levels designed to be remunerative to producers from land-based sources, a greater proportion of the net revenues of the Sea-Bed Authority would become available to assist the economic development of non-exporting developing countries, including land-locked countries, as contemplated in General Assembly resolution 2750 (XXV).

12. Whatever the nature of the arrangements might be, the establishment of a properly constituted International Authority, either able to undertake sea-bed mining itself or, alternatively, equipped with full regulatory and "taxing" powers, appeared to be a prerequisite for the equitable utilization of those new resources. A fundamental requirement concerning the organization of sea-bed production should presumably be that no excessive stimulus should be given to such production. If production activities were carried out by national enterprises, rather than directly by the international authority, "taxation" provisions and the conditions governing entry of the product into the home country of the producing enterprise should be such that supplies originating from the sea-bed should not receive preferential treatment by comparison with the land production of developing exporting countries. Consideration might also be given to the possibility of avoiding the built-in "preference" for sea-bed production which would arise from the carrying out of such production by integrated enterprises based in developed countries. Moreover, the General Assembly, in resolution 2750 (XXV), had envisaged the transfer to non-producing, including land-locked, developing countries of equitable shares of the benefits derived from the operations of the Sea-Bed Authority. That objective seemed also to call for the imposition of the maximum rates of royalties, taxation and fees which "the traffic would bear". The combined imposts should, at most, have an incidence at least equivalent to that of the average of national imposts on land production of the minerals concerned.

13. Mrs. CHIBESAKUNDA (Zambia), supported by Mr. BÁKULA (Peru), proposed that the statement of the representative of UNCTAD should be distributed *in extenso*.

14. The PRESIDENT said that there was no need for a statement of the financial implications of the Zambian proposal as there would be no problem with regard to covering the costs involved. If there was no objection, he would take it that the proposal was adopted.

It was so decided.[1]

Mr. Al-Qadhi (Iraq), Vice-President, took the Chair.

15. Mr. PENJOR (Bhutan) said that it was evident that if an acceptable and effective international legal order was to be established, various interests would have to be reconciled. To that end, the basic principles governing the sea-bed would have to be translated into reality, particularly the principle of the common heritage of mankind, adopted by the General Assembly in resolution 2749 (XXV). In order to protect the economic interests and the security of States and of the international community, agreement would have to be reached on the limits of the territorial sea and the international area. The formulas which had been proposed for defining the limits of the area envisaged different ways of dividing the territorial zone adjacent to coastal States. Those limits, as well as the fact that they had been proclaimed unilaterally, had serious implications for the viability of the international area in terms of both living and non-living resources and, indeed, destroyed mankind's most cherished hopes. Perhaps it would be worth while to recall the warning uttered by President Johnson in 1966, when he had said: "Under no circumstances must we ever allow the prospects of rich harvest and mineral wealth to evolve a new form of colonial competition among the maritime nations. We must be careful to avoid a race to grab and to hold the lands under the high seas. We must ensure that the deep seas and the ocean bottoms are, and remain, the legacy of all human beings."

16. From the objective and useful report of the Secretary-General on the economic significance of the various limits proposed for national jurisdiction,[2] his delegation had concluded that unilateral claims of 200 nautical miles or a 3,000-metre isobath would adversely affect the resources of the international area. Those claims negated the spirit and the principles of the common heritage concept, which recognized the overriding necessity of establishing an international area that would be economically meaningful. Therefore, his delegation supported the Kampala Declaration (A/CONF.62/23), which not only took into account the urgent needs and interests of the land-locked and other geographically disadvantaged countries and of other developing countries but also would enhance the meaning of the equitable distribution of benefits and make the common heritage more purposeful.

17. As a result of the rapid pace of technological development and the growing needs of mankind, the resources of the oceans had assumed major importance and their exploration and exploitation had given rise to increasingly intensive activities. It was therefore urgent to take the first essential steps towards international agreements with a view to the establishment of a rational and equitable international régime which would satisfy the just demands of the coastal States and at the same time take into account the interests of other States.

18. It was encouraging to note that many participants had shown a desire to ensure a balance in the interest of all groups of States, in a spirit of compromise and co-operation, having regard to the over-all interests of the international community.

19. The Kingdom of Bhutan was a land-locked Asian State. His delegation considered that any agreement reached at the Conference on the Law of the Sea should promote the well-being of all States, especially the developing countries, by making them beneficiaries of the common heritage. To that end, his delegation would welcome any proposal or provisions for the establishment of a regional or subregional resource jurisdiction in any region where the States concerned might agree to reserve all the resources, both living and non-living for the common enjoyment of all the States in that region or subregion.

20. The problems of the land-locked States with regard to free transit and right of access to and from the sea warranted special attention. In the first place, the traditional universality and freedom of the seas would be meaningless if the land-locked countries did not enjoy the right of free transit to the sea. Secondly, free transit was their only means of communicating with the outside world, particularly with regard to international trade. Thirdly, if the land-locked States were to share in the common heritage of mankind free transit was an essential prerequisite without which participation would be impossible. Therefore, his delegation welcomed the draft articles relating to land-locked States in document A/AC.138/93 (A/9021 and Corr. 1 and 3, vol. II, p. 16).

21. Mr. LEROTHOLI (Lesotho) reviewed the developments which had led to the adoption of a common position by the African States with respect to the law of the sea, mentioning the African States regional seminar on the law of the sea at Yaoundé in 1972, the Declaration of the Organization of African Unity of Addis Ababa in 1973, and of Mogadiscio in 1974 (A/CONF.62/33). The African States looked upon those Organization of African Unity Declarations as the framework of their common position, although each State had its respective instructions which took into account its particular circumstances.

22. The Kingdom of Lesotho was perhaps, as a land-locked State, in the most difficult position because it was completely surrounded by the Republic of South Africa, which was ruled by a white minority Government applying the inhuman policies of *apartheid* rejected by every other nation in the world. It therefore urged the Conference to consider with sympathy the contents of the Kampala Declaration of March 1974, which embodied its aspiration to be able to reach the sea and communicate with the rest of the world under a new legal order of the oceans.

[1] The full text of the statement made by the representative of UNCTAD has been issued as document A/CONF.62/32.

[2] Document A/AC.138/87 and Corr. 1.

23. Lesotho attached great importance to the right of free access to and from the sea, which entailed the right of transit for land-locked States. Both were basic to the very survival of Lesotho as an independent sovereign State and their exercise should not be subject to the unilateral discretion of a transit State. Those rights should be embodied in a multilateral convention, and he felt that the draft articles in document A/AC.138/93, with some improvements, could meet that need.

24. With regard to the exclusive economic zone, he felt that it constituted the central theme of the Conference, since it affected almost all the other issues which must be settled. The fact that that concept emanated from the countries of the third world increased its value.

25. He warned that the Conference might, paradoxically, commit a grave error in the name of the developing nations and of technology if it decided to authorize coastal States to annex large and highly productive parts of the sea. The fact was that the right of the coastal State to establish an exclusive economic zone, as set forth in some draft articles which the Conference had before it, was tantamount to annexation or nationalization of the seas.

26. With respect to the term "developing nations", he said that the tragedy of the third world was that it was the product of colonialism, giving rise to the danger that the third world itself might adopt colonial concepts and formulate them as objectives of its own programme. That was exactly what Lesotho feared might happen with the concept of an exclusive economic zone or patrimonial sea zone.

27. The nationalization of the resource zones of the sea by coastal States would have the effect of retarding the economic progress of the land-locked States and making them subject to control by the coastal States. The ensuing relationship would be one of permanent dependence of land-locked States on their privileged coastal neighbours. Thus the geographically disadvantaged States would be subordinated to the coastal States and, as a consequence, an inequality which would be unacceptable in the third world would be created.

28. The mandate of the Caracas Conference was to negotiate and seek ways of administering justice on the seas in universal terms, and to put forward proposals to give effect to the collective will of all the peoples of the earth for peace and equality; that mandate must be carried out.

29. Contrary to what some speakers had maintained, he insisted that technological progress should be seen as the foundation of a new historical era in which mankind could exercise collective authority over the seas in order to control and administer their resources equitably.

30. The affirmation that there were deficiencies in the existing international law could give rise to a curious situation. It was, indeed, surprising that some countries which denounced the abuses resulting from the concept of freedom of the high seas at the same time defended the concept of the continental shelf. That concept, of recent origin, was the product of the Truman Doctrine, which was a unilateral assertion of the interests of the United States against the rest of the world. What it amounted to was the national annexation of the sea-bed, its subsoil and their non-living resources by coastal States for their exclusive jurisdiction and benefit. Now it was proposed that those countries should also annex the high seas superjacent to those sea-bed areas. In that connexion, he asserted that both the concept of the freedom of the seas as it was and the abuse that could ensue, and the concept of the continental shelf, should be rejected and it should be recognized that the continental shelf was actually part of the universal sea.

31. The argument that the coastal States had the right to extend their sovereignty to enormous distances in the interests of their security was groundless in the age of intercontinental ballistic missiles and secret military satellites. No country of the third world could stand alone in its fight against the forces which threatened its security. To deny some countries the benefits of the sea on the pretext of security would be to divide the third world on the basis of selfish national interests and to sabotage the struggle for decolonization and independence.

32. Turning to the issues before the Conference, his delegation would support proposals embodying the fundamental rights of free transit and free access to the sea for land-locked and otherwise disadvantaged States in a multilateral law-making convention. Secondly, in order to ensure all peoples a fair share in those resources of the sea and the opportunity of a decent standard of living, his delegation would seek the creation of two international economic zones, one regional and the other open to all nations. A regional economic zone would extend from the outer limits of uniform territorial seas of the coastal States of a region, covering a reasonably broad, productive and exploitable area of the high seas adjacent to such territorial seas, in which all the resources of the sea and subsoil thereof would be preserved for the exclusive enjoyment of the peoples of the area. Created along with the area would be a strong regional authority through which the States of the region would exercise collective jurisdiction in the control, administration, and equitable distribution of the resources of the regional sea area. In the exercise of such jurisdiction the regional authority would have to take full account of the legitimate uses of the sea by all States, both inside and outside the region, such as communication, navigation, overflight, scientific research, and several others. Additionally the regional authority would be entrusted with the specific duty of guaranteeing the security of the coastal States of the region against agression or encroachment from any quarters, taking into full account the wishes of the coastal States concerned and with their full participation, depending on the requirements of the region.

33. As for the sea beyond that area, his delegation would support the creation of a world-wide International Authority under the auspices of the United Nations as a special agency with comprehensive jurisdiction over the resources of the rest of the sea area, exercising control, administration and equitable distribution of the benefits accruing from the exploitation of the area by formulae which were a matter of detail for further consideration.

34. All the topics before the Conference were in the final analysis dependent upon two great choices: on the one hand, to recognize the universality of the sea and devise international instruments for its administration and control; on the other, totally to disregard that universality with the consequent scramble for the sea and its annexation by the coastal States. That could be a prelude to the liquidation of the United Nations just as the Second World War had liquidated the League of Nations after the scramble for Africa had been designed in Berlin.

35. The rights the Conference would create for land-locked and other disadvantaged States would reflect the extent to which the world was prepared to give effect to the notion of equality which was a corollary of universality with respect to something tangible like the sea.

36. Mr. YAO (Upper Volta) said that his country was a small land-locked State situated at considerable distance from the sea, its resources being mainly agricultural. Many years of continuous severe drought had hampered its development efforts and had made food problems one of the major concerns of his Government which had had to import not only the goods required for modernization of its agriculture but also supplementary food products. The industrial sector was in an embryonic stage and the incipient mining sector was not very profitable because of the great distance of the mineral deposits from the sea coast.

37. The foregoing indications made it easier to understand the fundamental position of Upper Volta on the topics before the Conference, particularly with respect to the right of free access to the sea for land-locked and geographically disadvan-

taged States, the concepts of territorial sea and exclusive economic zone, and the international régime of the sea-bed and the ocean floor beyond the limits of national jurisdiction.

38. On the first of these topics, various delegations had emphasized that although free access to the sea and freedom of transit of land-locked States had been recognized by several international bilateral or multilateral treaties, those rights had never been sanctioned by a legal instrument such as the one that was expected from this Conference. The delegation of Upper Volta understood those rights as formulated in the Kampala Declaration, namely, unrestricted access to and from the sea, the right of free transit, a right likewise to be exercised without restriction and discrimination by the transit State, whether a coastal State or not, and without subjecting the transit traffic to or from the sea to any customs duties, taxes or charges except charges for services rendered in connexion with such traffic.

39. On the question of the territorial sea, his delegation fully endorsed the proposal which appeared to receive the unanimous support of delegations and which moreover formed part of the Declaration approved in Addis Ababa in May 1973 by the Council of Ministers of the Organization of African Unity and which had been confirmed in June 1974 at Mogadiscio by the Heads of African States, specifically a territorial sea limited to 12 nautical miles. The Declaration recognized the right of coastal States to establish an exclusive economic zone of 200 nautical miles, provided the neighbouring land-locked States were permitted to participate in the exploration and exploitation of the resources in that zone. Nevertheless it was the view of his delegation that in order fully to reflect the spirit of justice underlying the convening of the Conference, the right of those States to participate in the exploitation and exploration of the non-living resources should also be recognized.

40. His delegation, whose position on the international régime of the sea-bed and the ocean floor beyond the limits of national jurisdiction was based on the principle of the common heritage of mankind contained in General Assembly resolution 2749 (XXV), considered that the proposed International Authority should be given broad powers and the means to exploit those resources directly or indirectly, but under its effective control in the latter case. The benefits from that exploitation should be shared fairly among States taking duly into account the needs of developing States, particularly those of land-locked States which should be granted special treatment and be adequately represented on all the bodies of the Authority.

41. Upper Volta also attached importance to the concern of archipelagic and island States, to the problems of the marine environment and to scientific research and transfer of technology.

42. This Conference, which had been convened on the initiative of the developing States just as the sixth special session of the General Assembly on the problems of raw materials and development, was called upon to prove that the old order established by a minority of States for their own benefit should no longer obtain in a world in which the developing States had become fully conscious of their rights.

43. Mr. ROBLEH (Somalia) said that his delegation was grateful for the position taken by the Conference concerning liberation movements, but regretted that the authentic representatives of Cambodia and the Provisional Revolutionary Government of South Viet-Nam were not participating.

44. In his opinion, the 1958 and 1960 Conventions had been designed to serve and perpetuate the vested economic and political interests of the developed maritime powers and had been established without the participation of the African and Asian States in the diplomatic negotiations. The erstwhile colonies were now full-fledged sovereign States and were determined to assert and fight for their legitimate rights. They refused to accede to diplomatic conventions on the law of the sea to which they were not contracting parties. This Conference, moreover, was not concerned with law alone; it was also concerned with the economic structure of the world today. The existing international rules relating to the seas and oceans enabled the big Powers to benefit most from marine resources and thereby maintain their economic superiority.

45. The Somali Democratic Republic viewed with sympathy concepts such as the patrimonial sea and the exclusive economic zone.

46. However, those concepts did not by their nature accord to the coastal State the necessary jurisdiction or control that it should possess in order to preserve effectively its marine resources for the exclusive use of its nationals. In his view, the concept of the exclusive economic zone implied the existence of restrictions on the sovereignty of the coastal State since it limited its jurisdiction to the economic sphere. Furthermore, in the event of its adoption, there were no guarantees that under the pretext of freedom of navigation the technologically advanced maritime Powers would not persist in completely disregarding the territorial integrity of developing coastal States by fishing in their territorial waters, and in endangering their essential security, through sea-based espionage activities for instance.

47. For all those reasons, an increasing number of developing States advocated wide territorial water limits as the most practical method of controlling and preserving the limited wealth of their coastal waters. More than half of the African coastal States had declared territorial sea limits of more than 12 nautical miles, while certain Latin American States had claimed limits of 200 nautical miles. Neither the 1958 Convention on the Territorial Sea and the Contiguous Zone,[3] nor the Organization of African Unity Declaration set a maximum breadth for the territorial sea.

48. In view of the immense economic and security importance of its coastal waters the Somali Government had enacted Law No. 37 of 1972 decreeing a limit of 200 nautical miles for its maritime belt.

49. Today, it was an accepted norm of international law that the territorial sea was an integral part of the territory of a State. Hence, the coastal State had the right to exercise sovereignty over its territorial sea. Within the territorial sea foreign merchant vessels were entitled to innocent passage, but military vessels must seek prior approval before they could pass through the national maritime belt.

50. Somalia wished to reaffirm its support for General Assembly resolution 2832 (XXVI) which contained the United Nations Declaration on the Indian Ocean as a zone of peace and which Somalia had sponsored.

51. The problems relating to the sea-bed and ocean floor beyond the limits of national jurisdiction were intricate and required the most careful consideration. General Assembly resolution 2749 (XXV) was a positive step towards narrowing the economic gap between the rich and poor nations, and the Conference had the historic mission of translating that ideal into reality.

52. The aim of the General Assembly in using the expression "common heritage of mankind" was clear and embodied the notion that the resources of the sea-bed and ocean floor beyond the limits of national jurisdiction belonged to all the peoples of the world and should be used for the benefit of all. The Somali Government did not subscribe to the idea that the International Authority which might be set up should be authorized to issue licences to private organizations and multinational corporations for the exploration of sea-bed resources. On that matter, it fully supported the Conference of the Heads of State or Government of Non-Aligned Countries in the Algiers Declaration of 1973, the Addis Ababa Declaration of 1973 and the Mogadiscio Declaration of 1974, since it believed that the establishment of an international régime with international ma-

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

chinery having comprehensive and effective powers to engage in the exploration and exploitation of the resources of the sea-bed was the only way to do justice to the idea of the common heritage of mankind.

53. His delegation attached the greatest importance to setting up a fair and just régime governing straits used for international navigation. There were two basic positions on the question. First, there was a trend, represented by the maritime Powers and technologically advanced States, which supported the traditional concept of free passage through straits used for international navigation. Secondly, there was the position of the developing coastal States, which tended to favour the concept of innocent passage and the exercise of full sovereignty and jurisdiction over such waterways by the coastal States where they formed an integral part of their territorial waters.

54. In accordance with the Organization of African Unity Declaration on the issues of the law of the sea, the new law should provide for the right of innocent passage, thereby recognizing the sovereignty of coastal States over straits which constituted part of their territorial sea. Such States would thus be in a position to safeguard effectively their national security, territorial integrity and political independence. Only thus would they be able to take appropriate measures to comply with international regulations for safety at sea and the prevention of pollution from ships passing through those straits.

55. Turning to the archipelagic concept, his delegation supported the views expressed by developing archipelagic States. Questions arising from the modalities of the precise delimitation of the territorial waters, economic zone and continental shelf of such States must be settled through bilateral and regional arrangements, although the decisions taken in that regard should be endorsed by the Conference.

56. As regards the prevention and control of pollution of marine environment, his delegation considered that there were three major sources of pollution which, by their nature, presented different problems of identification and therefore required different approaches for their effective control. Pollution caused by land-based sources, such as rivers and estuaries and industrial and chemical wastes, should be the responsibility of the coastal States. The same criterion should apply to pollution resulting from the exploration and exploitation of oil and other minerals by coastal States in adjacent maritime areas or territorial waters. In that regard, international rules and standards were required, the application of which should be optional in the case of coastal States. The other area of concern was the international sea-bed beyond the limits of national jurisdiction. His delegation fully supported the recommendations of the Stockholm Conference on the Human Environment and of the Inter-Governmental Maritime Consultative Organization. The Conference should consider adopting strict minimum standards and controls, which would be applied by the future international authority.

57. Scientific research could be expected to open up tremendous opportunities for all mankind. His delegation believed that, in areas under national jurisdiction, coastal States should have broad competence in order to ensure their security and the *bona fide* nature of the research. It also believed that the nationals of developing countries, who lacked experience and expertise in marine technology, should be afforded the relevant training, co-operation and assistance they required.

58. His delegation had always been guided by the high principles of mutual tolerance and universal brotherhood: those principles had governed its actions in the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, and would also determine its attitude towards the issues the Conference was about to discuss.

Mr. Amerasinghe (Sri Lanka) took the Chair.

59. Mr. MOCHTAR KUSUMAATMADJA (Indonesia) observed that his delegation firmly supported the principle that the resources of the sea beyond the limits of national jurisdiction should be used for the benefit of all mankind, particular consideration being given to the developing countries, in keeping with the Declaration of Principles governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction contained in General Assembly resolution 2749 (XXV). To that end, it supported the establishment of an effective International Authority with broad powers to engage in and administer the exploration and exploitation of the international sea-bed area and to regulate the distribution of benefits derived therefrom.

60. Indonesia was a country that comprised more than 13,000 islands, its combined coastlines being longer than the equator. It was situated between the Pacific and the Indian Oceans, at the crossroads of the busy international shipping lanes connecting the two oceans. Consequently, his Government attached the greatest importance to the Conference and the formulation of a new régime of the sea.

61. On 13 December 1957, the Indonesian Government had proclaimed Indonesia an archipelagic State. It had stated, among other things, that all the waters around and between the islands of Indonesia, regardless of their width, were the natural appurtenances of the land territory of the Republic and formed part of the internal or national waters under its absolute sovereignty. That concept emphasized the unity of the land and water territories of Indonesia, as reflected in the word "tanah-air", which in the Indonesian language was the equivalent of "fatherland" and literally meant "land-water".

62. The special responsibilities of Indonesia with regard to the interests of the international community, especially in respect of international maritime traffic were clearly provided for in the Declaration of 1957. That Declaration stated, *inter alia*, that the innocent passage of foreign vessels in internal waters delineated by the new method of drawing straight baselines was guaranteed in so far as it did not infringe upon the sovereignty or security of the Republic of Indonesia. Those guarantees of innocent passage through the archipelagic waters had been further developed in an Act and Regulation adopted after the Declaration.

63. His delegation, together with those of Fiji, Mauritius and the Philippines, had submitted to the sea-bed Committee some draft principles and draft articles outlining the concept of the archipelagic State (A/9021 and Corr. 1 and 3, vol. III, sect. 2 and 38). The basic elements of the concept were: first, by reason of its national unity, territorial integrity and political and economic stability; an archipelagic State was entitled to draw straight baselines connecting the furthest points of the outermost islands and drying reefs of the archipelago; secondly, the archipelagic State exercised sovereignty over the waters within the baselines, the air space above those waters, the water column, the sea-bed and the subsoil thereof, and also over the resources contained therein; thirdly, the territorial sea and the economic and other jurisdictions of the State with regard to the sea around it should be measured from those baselines; fourthly, the legitimate interests of the international community concerning passage through the archipelagic waters for the purpose of transit from the high seas to the high seas should be respected on the basis of the principle of innocent passage through archipelagic waters or designated sea-lanes, provided that such passage did not prejudice the peace and security of the archipelagic State.

64. He had noted the desire of a number of delegations to define an archipelago by the use of a mathematical formula fixing the maximum permissible length of baselines and the ratio between land and water within those baselines. Although any formula selected was bound to be somewhat arbitrary, his delegation was prepared to consider the suggestion, provided that it met the requirements of Indonesia and the other archipelagic States.

65. Turning to the question of passage through archipelagic waters, he said that his country depended for its existence on international maritime traffic, and it was imperative to ensure the speedy, safe and unhampered passage through its waters of all merchant ships of whatever flag. The draft submitted by the archipelagic States therefore expressly recognized the rights of innocent passage through their waters. The question of passage would perhaps be simplified if a clear distinction were made between merchant vessels on the one hand, and vessels with special characteristics, including warships, on the other. With regard to the former, the traditional rules and principles of innocent passage had proved very satisfactory for passage through the territorial sea and the archipelagic waters of Indonesia. His delegation was willing to support a convention which would provide that normal commercial navigation through traditionally used channels in archipelagic waters should be unrestricted and fully recognized. The situation was different in the case of other vessels, such as warships and submarines whose free and unhampered passage was, some countries claimed, essential for the maintenance of world peace and security. He submitted that there was an equally valid view, which saw such passage as running counter to the best interests of the international community, especially in the context of the arms race and the increase in world tension. In the particular case of his country, the passage of warhips and submarines of foreign powers might jeopardize not only Indonesia's national security but also the desire of the nations of South-East Asia to establish an area of peace, freedom and neutrality. Nevertheless, Indonesia had no intention of impeding the passage of such warships, provided the territorial integrity of archipelagic States was fully recognized and as long as such passage did not endanger their security. For such vessels it was proposed to institute special sea-lanes through archipelagic waters on innocent passage.

66. Lastly, there was the problem of the traditional interests claimed by neighbouring countries in archipelagic waters, a question which Indonesia was prepared to discuss bilaterally with its neighbours, based on the recognition of Indonesian sovereignty over such waters. The understanding which had been reached with Malaysia to recognize the special need of passage between Eastern and Western Malaysia gave testimony to the goodwill and sincerity of Indonesia with regard to finding a solution to that matter of national concern.

67. His delegation hoped that the concept of an archipelagic State would gain general acceptance and be embodied in the coming convention.

68. An issue of no less importance was that of innocent passage through straits used for international navigation, in regard to which Indonesia and eight other delegations had submitted draft articles to the sea-bed Committee (*ibid.*, sect. 6). The sponsors of that document strongly believed that passage through those straits should be covered by the régime of innocent passage, which guaranteed a fair balance between the legitimate interests of the coastal States and the general interests of international maritime navigation. In the light of recent technological advances, they considered that perhaps a more precise definition of that concept might be required in order to make it more responsive to present-day requirements. Further, with regard to the Straits of Malacca, his delegation supported the statement by the delegation of Malaysia (35th meeting) and was particularly interested in the solution of the problems of the passage of warships through those straits, since it directly involved the tranquility and security of the coastal States.

69. His delegation also fully endorsed the concepts of an economic zone and a patrimonial sea and hoped that it would be possible to draw up a unified concept on that issue.

70. Concerning areas adjacent to the territorial sea whose breadth should be regulated by agreement, his delegation thought it wise that the concept of a contiguous zone should be retained for purposes of health control, customs and other jurisdictions associated with that area.

71. With regard to the continental shelf, the only realistic attitude was to maintain the existing legal régime. Current international law recognized the sovereign rights of coastal States over the continental shelf connected with the exploration and exploitation of its natural resources up to the 200 metres isobath and up to the limit of its "exploitability". Once that criterion had been defined and the new limit of the continental shelf had been delineated, the existing régime would continue to be applied to that part of the sea-bed, although the problem of the delimitation of the shelf between adjacent or opposite States would, of course, still have to be decided. His country had negotiated and concluded boundary agreements with practically all its neighbours, with the exception of one or two cases in which negotiations were still in progress.

72. Indonesia fully understood the problem of countries which in actual fact were in a disadvantaged geographical position, as well as that of the land-locked countries. Although it recognized the vital interest of those countries in having access to and from the sea, it thought that modalities for such access should be negotiated with the transit States, since it was only by co-operation with them that those rights could be effectively exercised.

73. The Government of Indonesia thought that scientific research carried out within internal waters, archipelagic waters and the territorial sea fell completely under the sovereignty of coastal States, while research outside the territorial sea, but within the limits of national jurisdiction, should be carried out only with their expressed consent and participation. That criterion should also apply to marine pollution.

74. His delegation wished to draw attention to the problem of semi-enclosed seas, which hitherto had received very little attention and could be examined together with the concept of the economic zone and patrimonial sea. In any case, it was prepared to co-operate with interested delegations in order to work out an acceptable legal régime which would guarantee the special interests of the coastal States concerned.

75. Finally, his country wished to appeal to the big maritime Powers to adapt themselves to the changes which had taken place and were taking place in the world and to approach the questions of the law of the sea from the point of view of sovereign equality and equity and less on the basis of power relationships, whether economic or military. In particular, it trusted that the military needs of a few countries to ensure the free movement of their vessels would not be confused with the legitimate interest of the world community in the safe and speedy passage of merchant vessels.

76. Mr. SCHACHT ARISTEGUIETA (Venezuela) said that the centuries-old struggle between States which upheld the freedom of the seas as the best means of protecting their political, military and economic interests, and States which sought to use the resources of the seas adjacent to their coasts for the development and welfare of their peoples, was the fundamental reason for convening the Conference, which marked the beginning of the formulation and development of a new international law of the sea, which, through its greater universality, sought to be juster and more equitable, especially to the developing countries.

77. There was, at least in theory, a consensus that the existing anarchy created by the freedom of each State to legislate on its own maritime limits, should give way to a settlement through an international agreement freely discussed and endorsed by all States on the strictest basis of legal equality.

78. He cited the address given by the President of the Republic of Venezuela, M. Carlos Andrés Pérez at the inauguration of the Conference, at the 14th meeting, in which he drew attention to the importance of the sea in the history of Vene-

zuela, and emphasized that it represented for him an instrument of peace and justice in the world, and an assurance of prosperity for all nations.

79. Venezuela had always adopted a progressive attitude concerning matters relating to the international law of the sea. His country had declared in favour of 12 miles as the limit of territorial waters, had applied that principle unilaterally in 1956, and continued to defend its position during the Conference. Venezuela also defended the rights of the coastal States on the continental shelf.

80. As to the exclusive economic zone, the Government of Venezuela believed that in the field of the international law of the sea, the question which was ripest for action was that of the coastal State's protection of the natural resources of the sea adjacent to its coast. That question had already been stressed by the Latin American Republics in Mexico and Santo Domingo and had been discussed by them and other developing countries at the Rome Technical Conference on Marine Pollution and its Effects of Living Resources and Fishing. The coastal State had legitimate rights not only to protect the resources in its adjacent waters from pollution and the extermination of species and also to use the wealth of those seas for the benefit of its people. For that reason Venezuela had welcomed the idea of a patrimonial sea, the main lines of which contained the basic elements required for finding a satisfactory formula that could be embodied in an international norm to safeguard the interests of all the coastal States.

81. It was the inalienable right of the developing countries to strive for the establishment of a new international order based on equity and the sovereign equality, interdependence, common interests and co-operation of all States which would make it possible to eliminate the gap between the developed and the developing countries and ensure the economic and social development and peace and justice for present and future generations, as provided in resolution 3201 (S-VI) adopted by the sixth special session of the General Assembly on 1 May 1974.

82. Similarly, Venezuela had endorsed the fundamental principles of the Declaration adopted by the United Nations General Assembly in resolution 2749 (XXV), according to which the sea-bed beyond national jurisdiction and its resources were the common heritage of mankind. To give effect to that principle, an international authority was required with power to carry out all possible activities within that area of the sea-bed.

83. Venezuela did not wish the sea to be a cause of conflict and confrontation, but a vehicle for understanding, equal treatment and sharing. Therefore it was categorically opposed to the future of the sea being left to privilege and technological exclusiveness. The concept of the sea, in the juridical, political, economic and cultural sense, should acquire new meanings more in harmony with the needs of the present generation and with those of future generations, which would have to look to the sea for the satisfaction of their vital food needs.

84. He wished to reiterate the points about which his people and his Government were concerned. First, there was Venezuela's solidarity with and support for the cause of the land-locked States, which also had a right to the sea and its wealth, particularly its sympathy and support for the justified aspirations of Bolivia. Therefore, he wished to say that his Government fully backed the resolution adopted by the Chamber of Deputies of the Republic of Venezuela, expressing solidarity with the just aspirations of Bolivia, and the wish expressed in that resolution that the present Conference would reach just and generous conclusions with regard to those peoples which, for historical reasons or by political accident, had no access to the sea. Secondly, it wished to support the demands of the peoples of Latin America that the Panama Canal, which was used by the whole international community, should become an integral part of the Republic of Panama and be under Panama's sovereignty. That was a situation for which a suitable and equitable solution should be found as soon as possible in order to repair and rectify an inconceivable abuse of power to the detriment of a weak but noble Latin American nation.

85. Nobody could expect the present Conference, which was not trying to codify but to elaborate the law of the sea, to reach a definitive result. If 86 countries had had serious difficulty in reaching agreement at the Geneva Conferences, it was only logical to suppose that 150 would have as much or more difficulty in co-ordinating their interests and protecting them by legal rules. It had also been said that the present Conference had been convened too early. Those who thought so might have valid reasons for their opinion, but it was a fact that in the long march towards the elaboration of a new and juster international law of the sea, that first step was a good augury for the achievement of the aim that was being sought, as it marked the beginning of negotiations that would eventually lead to the formulation of a new law of the sea.

86. On behalf of the Venezuelan Government, he sincerely thanked delegations for their expressions of gratitude to Venezuela and said that they were the best reward for the efforts his Government had made to ensure that the Conference could be held under the best possible conditions, as a public demonstration of Venezuela's firm and irreversible determination to contribute to co-operation among nations and a better understanding between peoples in seeking valid, realistic and practical formulas for the juridical, political and economic order laid down in the new law of the sea.

87. Right, justice and peace could really be guaranteed and strengthened only if all countries relinquished their respective interests and united their efforts to ensure the application of a new economic and social order within the framework of ideological and doctrinal plurality which was imperative in such a large and heterogeneous society as the international community.

88. He congratulated the President of the Conference on the admirable way in which he had directed the debate and expressed his conviction that, under the President's wise direction, the present session would be most fruitful.

89. The PRESIDENT said that 115 speakers, 29 of whom had been of ministerial rank, had already spoken in plenary meetings. Statements had also been made by the representatives of the Council for Namibia, the specialized agencies and the non-governmental organizations. The arrival of Mr. Luis Echeverría, the President of Mexico, was awaited. Such facts showed the world-wide importance of the Conference. He thanked all the speakers for the help they had given in clarifying the issues before the Conference, and he said that special thanks were due to the Government of Venezuela for the magnificent buildings and services it had provided for the Conference and for its most generous hospitality.

The meeting rose at 6.40 p.m.