Third United Nations Conference on the Law of the Sea

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Summary records of meetings of the Second Committee
34th meeting

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he referred to the agreement on the La Plata river basin and to the URUPABOL Convention—the name being based on the names of Uruguay, Paraguay and Bolivia—under which a joint merchant fleet was being considered.

81. In exercising his right of reply, he would not dwell on Paraguay's reference to participation in the 200-mile territorial sea, since that question had already been dealt with by his delegation.

82. Mr. TREDINNICK (Bolivia), speaking in exercise of the right of reply, said that the 1904 Treaty to which the Chilean representative had referred had been imposed on Bolivia as a conquered country and had compelled it to cede its entire sea coast. That Treaty could not be cited as a model.

83. The chance meeting in Brazil had not produced any understanding on the situation and there had been no joint communiqué.

84. His delegation reserved the right to speak again on the question.

85. Mr. BARSEGOV (Secretary of the Committee) informed the Committee that the Syrian Arab Republic had been added to the sponsors of document A/CONF.62/C.2/L.44.

The meeting rose at 6.10 p.m.

34th meeting

Friday, 9 August 1974, at 10.50 a.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

Land-locked countries (*concluded*)

[*Agenda item 9*]

1. Mr. ROBINSON (Jamaica) observed that many delegations had spoken of the need for further elaboration of the term "geographically disadvantaged States". They had apparently overlooked the definition appearing in article 5 of document A/CONF.62/C.2/L.35, sponsored by his delegation and that of Haiti. It would be noted that the term "geographically disadvantaged States", as used in that article, meant developing States which either were land-locked or, for geographical, biological or ecological reasons, derived no substantial economic advantage from establishing an economic zone, were adversely affected in their economies by the establishment of such zones, or had short coastlines. The definition, although perhaps not perfect, addressed itself to economic as well as geographical criteria, and therefore encompassed the essential features of a disadvantaged State.

2. The provision made for the rights of geographically disadvantaged States in article 1 of document A/CONF.62/C.2/L.35 was an essential ingredient of the régime for the economic zone. The right set forth in article 2 existed within the framework of a region, the word "region" being understood to signify a geopolitical area. Article 2 accorded the nationals of disadvantaged States of such a region the right to exploit the renewable resources within the economic zone in order to foster the development of their fishing industries and to satisfy the nutritional needs of their populations. That right must be provided for in the future convention but the States of the region would have to work together to secure the enjoyment of that right by the geographically disadvantaged State.

3. The submission of the articles in no way implied withdrawal of the working paper submitted by his delegation to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction in 1973 (A/9021 and Corr.1 and 3, vol. III, sect. 45).

4. Mr. MOVCHAN (Union of Soviet Socialist Republics) said that his delegation had decided to speak on the item on land-locked countries in order to draw attention to the serious problems besetting those countries because of their geographical position.

5. In requesting that they should be allowed to exploit the resources of the oceans together with the coastal States, the land-locked countries were not asking for any special favours; they were simply seeking to enjoy the same rights as coastal States on the basis of equitable principles. Some countries, on the other hand, were claiming special rights; for example, a number of straits States were asking for special rights in respect of international navigation.

6. The 1965 New York Convention on Transit Trade of Land-locked States[1] had been ratified by only a few countries. The Soviet Union, which had for many years co-operated with its land-locked neighbours Mongolia and Afghanistan in the matter of transit of their goods through its territory, had ratified it. In its view, the principle of free access by land-locked countries to the sea should be a universally recognized principle of international law, the exercise of which should not be subject to any conditions whatever, including reciprocity.

7. While the principle of free access of land-locked States to the sea should be embodied in the future convention, technical and other specific arrangements relating to transit could be the subject of bilateral agreements between the land-locked and transit States.

8. The land-locked countries had nothing to gain from the broadening of the limits of the jurisdiction of coastal States over marine resources. Indeed, that would only add to their difficulties. Accordingly, his delegation, together with the delegations of a number of other socialist countries, when submitting draft articles on the economic zone (A/CONF.62/C.2/L.38), had provided that developing land-locked countries and States with narrow access to the sea or narrow continental shelves should be given preferential treatment in respect of fishing in the economic zones of neighbouring coastal States on equal terms with their nationals. The Soviet Union also supported proposals whereby the international community would give special consideration to the land-locked countries in respect of the exploitation of the resources of the international sea-bed area and the sharing of the benefits derived therefrom. The group of land-locked countries must also be adequately represented in the main bodies of the International Sea-Bed Authority.

9. Mr. NJENGA (Kenya) observed that Kenya provided a natural route to and from the sea for a number of land-locked countries in the region; indeed, the initial motive that had led to the colonization of Kenya had been to provide access to a neighbouring country. Kenya had always been conscious of the difficulties experienced by the African land-locked countries and had done everything in its power to ensure their access to the sea. In particular, it was acutely aware of the need to help them overcome the problems created by the "balkanization" of the African continent by the colonialists. His Government had therefore complied with the spirit of the 1921 Barcelona Con-

[1] United Nations, *Treaty Series*, vol. 597, p. 41.

vention and Statute on Freedom of Transit,[2] the 1958 Geneva Convention on the High Seas,[3] and the Convention on Transit Trade of Land-locked States, although it had as yet ratified only the Geneva Convention.

10. At the same time, Kenya had never expected that its conduct toward its land-locked neighbours could be construed as imposing on it an obligation to recognize that they had a servitude in respect of its territory outside the framework of bilateral, multilateral or regional agreements. Yet such appeared to be the intent of document A/CONF.62/C.2/L.29, as also the purpose underlying the insistence on the right of free and unrestricted access in the Kampala Declaration (A/CONF.62/23). The citizens of Kenya themselves did not enjoy the right of free and unrestricted transit within their territory, since they had to obey the relevant laws and regulations. No State could allow any other State the right of transit through its territory outside the framework of bilateral or regional arrangements because the transit State's duty to its citizens to maintain security and law and order would be jeopardized if such an unreasonable right were to be recognized. While Kenya was well aware of the plight of Botswana, Lesotho and Swaziland, surrounded as they were by régimes of racial chauvinists with which no satisfactory agreements were possible, it strongly opposed the adoption of a principle that would undermine the sovereignty of the coastal States.

11. Furthermore, his delegation believed that the requirement of article 3 of the Geneva Convention on the High Seas that free transit should be accorded "on a basis of reciprocity" was eminently just and should be retained in any future convention on the subject. Speaker after speaker from the land-locked countries had stated that their right of free access to the sea derived from their entitlement to enjoy use of the seas on a non-discriminatory basis. However, the purpose of free access was surely to enable the land-locked States to conduct trade with the outside world. The same consideration might compel a transit State to request similar privileges of its land-locked neighbour. For example, Kenya had important trade connexions with countries in central Africa and the easiest route of access to them lay through Uganda. Reciprocity did not necessarily mean equality of treatment in all respects. However, the only basis for harmonious relations between a land-locked and a transit State was mutual respect between neighbours, which took into account the sovereign equality of all States.

12. His delegation had no difficulty in supporting the provisions of article 2 of document A/CONF.62/C.2/L.39, which provided for the right of land-locked countries and other geographically disadvantaged States to participate in the exploration and exploitation of the living resources of the economic zone of neighbouring coastal States on a non-discriminatory basis. That right had in fact been reflected in a proposal submitted by his delegation to the sea-bed Committee (A/9021 and Corr.1 and 3, vol. III, sect. 27). It had been further recognized by the African Heads of State and Government in the Declaration of the Organization of African Unity (A/CONF.62/33). Such participation could, however, be rationally conducted only on the basis of regional or bilateral agreements, provisions for which was presumably the intention of the second sentence of article 2 of document A/CONF.62/C.2/L.39.

13. His delegation did not, however, deem it reasonable to provide for similar rights in respect of the non-living resources of the economic zone. It therefore opposed article 3 of document A/CONF.62/C.2/L.39 and the relevant provision of the Kampala Declaration. That was because the régime for the exclusive economic zone was intended, in its view, to replace the régime for the continental shelf, which had been based on the natural prolongation of the coastal State's territory.

14. His delegation had considerable sympathy for the draft articles in document A/CONF.62/C.2/L.48. Together with the constructive elements of document A/CONF.62/C.2/L.39 and the Kampala Declaration, they could provide a basis for a solution mutually acceptable to land-locked and coastal States alike.

15. In conclusion, he said that only the adoption of the statesman-like proposals contained in the Declaration of the Organization of African Unity could lead to satisfactory results. His delegation urged the land-locked countries of the African continent to support that Declaration and not to be deluded by superficially more attractive proposals that in the end would prove less beneficial to them.

16. Mr. SAHBANI (Tunisia) said that his delegation recognized the right of the land-locked countries to access to the sea—a right which had been affirmed by the African Heads of State and Government in the Declaration of the Organization of African Unity. Nearly one third of the States on the African continent were land-locked, and it would be unfair if the future convention deprived them of their legitimate rights with regard to the oceans. Unfortunately, the participants in the Conference were witnessing attempts by a number of geographically advantaged countries to appropriate the resources of the seas for themselves. For the most part, they had long coastlines or possessed islands and islets situated in different regions of the world.

17. While his delegation sympathized with those coastal States whose economy depended on the sea, it felt that every effort must be made to help the large group of land-locked and geographically disadvantaged States, most of which were developing countries. Since they could not claim any right to the resources of the subsoil in waters adjacent to coastal States, they must be given access to the living resources of the oceans on a bilateral or regional basis.

18. Mr. MESLOUB (Algeria) said that the Conference must make every effort to satisfy the legitimate rights of the geographically disadvantaged countries, particularly the developing land-locked countries. Indeed, the treatment they should receive was one of the major problems to be resolved.

19. While his delegation realized that the Conference could not wholly correct the inequities existing between the many countries with difficulties of survival and the minority of highly privileged countries, it was convinced that some important steps could be made to redress the balance. The new law of the sea must meet specific requirements; in particular, it must foster the development and progress of all nations without exception. Such an objective called for bold new measures, including the establishment of machinery which, while not divesting the rich countries of their surplus resources, would prevent the unbridled exploitation of resources belonging to the poorer countries. In other words, the future convention should ensure genuine co-operation between all peoples, thereby paving the way for an era of peace, justice and well-being for all.

20. The developing land-locked and other geographically disadvantaged countries must be granted not only free access to the sea but also the opportunity to exploit marine resources, of which they had so far been virtually deprived.

21. Efforts to help the land-locked and other disadvantaged countries could be undertaken most satisfactorily at the regional level, where the bonds of solidarity had been strengthened by the attainment of independence. The Declaration of the Organization of African Unity, for example, revealed the interest of the Heads of State of the African region in the subject under discussion. The coastal States of Africa had been quick to realize that their own development was bound up with that of all the States of the region, with the result that they were proposing that the economic zone should benefit the disadvantaged countries in addition to the coastal States. They were

[2] League of Nations, *Treaty Series*, vol. VII, p. 11.
[3] United Nations, *Treaty Series*, vol. 450, p. 82.

also unanimous about the need to grant land-locked countries transit rights to and from the sea. The necessity for regional solidarity was all the more apparent if one examined the statements on the economic zone made, on the one hand, by the developing land-locked and other geographically disadvantaged countries and, on the other, by certain major Powers. Whereas the former had unreservedly supported the concept, the latter had attempted to strip it of much of its substance.

22. The regional approach must be supplemented by manifestations of solidarity between all the countries of the third world. Only if they showed a common front would the Conference be a success and would the legitimate rights of all countries be safeguarded.

23. A successful outcome could be achieved if all the members of the international community could agree to endorse unreservedly the principle of the common heritage of mankind and to accord equitable treatment in the international sea-bed area to the land-locked developing countries.

24. The draft articles in documents A/CONF.62/C.2/L.35, 36 and 39, together with the provisions of the Declaration of the Organization of African Unity, could, in his delegation's opinion, provide a sound basis for a solution of the problems under consideration.

25. In conclusion, he agreed with earlier speakers concerning the need for a more precise definition of the term "geographically disadvantaged State" and suggested that it should be based on article 5 of document A/CONF.62/C.2/L.35.

Mr. Pisk (Czechoslovakia), Vice-Chairman, took the Chair.

26. Mr. MAIGA (Mali) said that the question of right of access to the sea could be approached from two different, though non-contradictory, viewpoints. It could be considered as a corollary of the principle of freedom of navigation, namely the right of all to participate on an equal footing in the exploitation of the common heritage of mankind. It could also be seen as a fundamental element of the expansion of international trade. The right of access no longer appeared to be a special right of land-locked countries but had, instead, become the particular manifestation of a more general right, valid for all, namely free transit, freedom of communications and freedom of trade. The right of access to the sea was the right of a State, or goods or individuals from that State, to traverse the territory of another State in order to reach the sea. That was the narrow meaning of the term. In the broad sense, the right of access to the sea was the right to use the sea under the same conditions as the coastal States. However, it was in the narrow sense that the term had so far been used.

27. The 1965 New York Convention on Transit Trade of Land-locked States reaffirmed that the recognition of the right of each land-locked State to free access to the sea was an essential principle for the expansion of international trade and economic development. It also stipulated that in order to promote fully the economic development of the land-locked countries, the said countries should be afforted by all States free and unrestricted transit, in such a manner that they had free access to regional and international trade in all circumstances and for every type of goods. Article 2 of the Convention affirmed that freedom of transit should be granted under the terms of the same Convention.

28. The transit States and the land-locked States had always agreed on two points: that it was in their common interest to recognize the right of access and that special agreements should be concluded to regulate the modalities of the exercise of free transit, adapted to different situations and taking into account the sovereignty and interests of the transit States. Today the right of access of land-locked States to the sea was a right recognized and laid down in international treaties. The principles of freedom of the sea and equality of States were firmly established in international law and the right of access to the sea was a corollary of those principles. The question arose whether the right of access should be recognized in the new legal order as a special right granted only to land-locked countries because of their geographical situation or whether it should be presented as a particular manifestation of a more general right of transit, valid for all States. A new approach should be taken with respect to the contents of the right and the guarantees for its exercise, in other words, the right of access should be recognized as a right to be granted by transit States quite apart from its conventional, narrow interpretation, particularly since statements made in the Committee suggested that transit States were not prepared to grant the right of access to their neighbours without certain firm guarantees. The right of access was, however, vital to the land-locked and developing countries and to the transit States as well, since it was common knowledge that no State today was entirely self-sufficient. It should be interpreted in a more general sense in order to compensate the land-locked countries for the disadvantages resulting from their geographical situation. Since any restrictions to the expansion of their economies would create serious imbalances and would be a threat to international peace and security, the right of access should be recognized as a positive factor in peaceful relations between nations. The relevant provisions in document A/AC.138/93 (A/9021 and Corr.1 and 3, vol. II, p. 16) and in document A/CONF.62/C.2/L.39 deserved special attention as they complemented previous treaties.

29. The Convention on Transit Trade of Land-locked States did say that the right of transit should be on the basis of reciprocity. However, it had granted that right to land-locked countries because of their geographical position, which meant that they were unable to grant reciprocal rights. It appeared that those countries which held that the right of transit should be granted on the basis of reciprocity were attempting to shirk their responsibilities.

30. Mr. PANUPONG (Thailand) said that his country, a coastal State, had long served as a transit State for one of its close neighbours and had always viewed with great sympathy the legitimate aspirations of land-locked countries, especially those with a developing economy. For that reason, Thailand had become a party to some of the international conventions which accorded special rights and treatment to land-locked countries and would welcome new proposals aimed at further improving their situation. Those proposals should, however, embody the necessary safeguards and guarantees for the protection of the rights and interests of coastal transit States.

31. His delegation wished to reaffirm its support for the principle of free access of all land-locked countries to the sea and recognized that a necessary concomitant of such access was the right of transit through neighbouring coastal States, including the use of means and facilities for transport and communications. The modalities for the exercise of the right of transit should, however, be determined by agreement between the land-locked and the transit State concerned. In other words, the convention should confine itself to laying down broad guidelines and general standards for such agreements.

32. His delegation believed that reciprocity should remain an essential counterpart to the exercise of the right of transit by land-locked States. It could not agree with the view frequently expressed by land-locked countries that there was a basic difference between the transit needed by land-locked countries because of their geographical situation and that required by coastal countries. Both kinds of transit shared the same ultimate aim of facilitating transport and communications between different parts of the world. Furthermore, a coastal State might need to traverse the territory of a land-locked country owing to transport and communications requirements. It should also be borne in mind that the requirement of reciprocity stipulated in existing multilateral conventions and bilateral agreements had remained largely theoretical. Furthermore, since the exercise of the right of transit by land-locked

countries did undeniably impose a burden on the transit countries, it would be only just and reasonable that land-locked countries should also be prepared to assume a similar burden in appropriate circumstances. Under no circumstances should reciprocity be used as a pretext for withholding from land-locked States their primary right of transit, and a provision to that effect should be included in the future convention.

33. With respect to the right claimed by land-locked countries to participate in the exploitation of the resources in the neighbouring zones of national jurisdiction beyond the territorial sea, his delegation held that there were justifiable differences between renewable and non-renewable resources. It agreed that developing land-locked and other geographically disadvantaged States should have the right to take part in the exploitation of the living resources in the area beyond the territorial sea of 12 nautical miles. On the other hand, non-renewable resources would eventually be depleted and it was therefore reasonable and equitable to reserve them for the exclusive use and enjoyment of the coastal State in whose zone of national jurisdiction they were found. To assert otherwise would be to demand an excessive sacrifice on the part of the coastal States, which would hardly be realistic under existing world conditions unless a new legal order were to be established for the management, distribution and utilization of all the resources of the world, wherever they were situated.

34. Thailand had very little to gain from the currently proposed extension of coastal State jurisdiction over the adjacent ocean space. Furthermore, no valuable resources had as yet been discovered in its relatively narrow continental shelf.

35. His delegation could not accept article 3 of document A/CONF.62/C.2/L.39. Article 5 was also unacceptable in its existing formulation because it was unduly discriminatory and arbitrary in that it singled out the revenues derived from the non-living resources of the maritime zone while leaving untouched those derived from the exploitation of similar resources located on the land territory. Both articles failed to take account of the existing disparities among the various countries in terms of their economic development and the availability of their land-based resources.

36. His delegation fully shared the view that in all matters relating to access to the international area, to representation in the various organs of the machinery to be established and to the decision-making process of such organs, land-locked States should be placed on an equal footing with coastal States. Furthermore, special consideration ought to be given to land-locked countries, especially the developing land-locked countries, in the distribution of the benefits derived from the exploitation of the resources of the international sea-bed area.

37. Mr. NAJAR (Israel) said that the problems faced by the land-locked and the geographically disadvantaged countries were today far more important than they had been in the past. The development of technology had increased the economic importance of the rights recognized or about to be recognized in the vast ocean space. The appropriation of that space by States enjoying coastlines arose from an accentuation of the inequalities which history and geography had established among nations. Developed and developing nations which, because of their geographical positions, participated very little, or not at all, in that expansion of continents, were increasingly aware of their geographical disadvantages and were obliged to make their claims more decisively and forcefully.

38. The Conference had to take into account the claims of the land-locked and other geographically disadvantaged countries if it was to arrive at a widely accepted convention. Certain delegations had expressed doubts regarding the possibility of defining geographically disadvantaged countries, but his delegation saw no great difficulty on that subject. The Conference was a conference on the law of the sea and it was in relation to the sea and its resources that the geographically disadvantaged countries should be defined. The classification of a State as geographically disadvantaged should depend on the measure of its access to the high seas and of its share in the living or non-renewable resources of the sea. In that connexion, the delegation of the Netherlands had submitted as an example a remarkable document which mathematically measured the relative opportunities of the various countries to take advantage of an exclusive economic zone. A similar calculation could be made with respect to the continental shelf. It was also possible to define objectively the future positions of States with respect to the use of the sea and its resources. That was most necessary today because while the sea had always been regarded as being open to all as a common heritage, it was today increasingly being divided and appropriated by States. The need to ensure that land-locked and other geographically disadvantaged States had access to the sea and to its resources was therefore more urgent.

39. The problem of access to the high seas was probably easier to solve than that of access to the resources of the sea, perhaps because it was an older problem. A land-locked country should share fully in the advantages of maritime relationships. A country whose opening to the sea was a river port should have access to the high seas. A country whose territorial sea was separated from the high seas by straits must have absolute freedom of navigation therein. Geographically disadvantaged situations always had negative economic implications and no obstructions should be added to those implications by countries which were geographically able to control or impede access to the high seas. International efforts must be directed towards that end.

40. With regard to enclosed countries, transit through the national territory of one or several States did present difficulties and bilateral or multilateral arrangements should be negotiated within the framework of international law in order to prevent weaker States from being victimized by the stronger. The convention should therefore contain a chapter devoted to land-locked and geographically disadvantaged countries laying down the rights, prerogatives, and obligations of States. The proposals contained in the Kampala Declaration and in documents A/CONF.62/C.2/L.29 and 39 should be studied and developed as a basis for that part of the convention.

41. Access to the riches of the sea for the benefit of the land-locked or geographically disadvantaged countries raised new problems which had not yet been completely defined. There was, however, a remarkable and even revolutionary development: the implementation of the idea of exploitation of the sea-bed for the common benefit of mankind. In that connexion, his delegation believed that States should be adequately represented in the new organ to be established to manage those resources. The regional criterion should not be the only basis for determining that representation because States from the same region often had very diverse geographical and economic situations. Care should also be taken to ensure that countries without advantageous continental shelves or economic zones were not under-represented.

42. With respect to the resources of the continental shelf and the exclusive economic zone under national jurisdiction, it was no longer possible to ignore the trend of thinking which would require States which benefited most from the exploitation of those resources to contribute to the economic development of the countries which benefited least. In document A/CONF.62/C.2/L.39, provision was made for direct participation of land-locked and geographically disadvantaged States in the exploitation and exploration of the living and non-living resources of the ocean space. Other proposals were to the effect that the beneficiary countries would make contributions to the International Sea-Bed Authority, which would distribute those funds as well as revenues from exploitation according to development needs. His delegation had no doubt that that new type of international solidarity would find its expression in the new law of the sea and hoped that that principle would be laid down

in the new convention. His delegation shared the view that it was necessary to establish a machinery for the settlement of disputes resulting from interpretations of the new convention.

Mr. Aguilar (Venezuela) resumed the Chair.

43. Mr. PLAKA (Albania) said that the recognition of the legitimate rights of the land-locked countries was one of the important tasks of the Conference. It stemmed from the fundamental aspiration of the great majority of participating States to codify a law of the sea in accordance with principles of justice and equality.

44. Previous Conferences on the Law of the Sea had not given full satisfaction to the rights of the land-locked countries. In the current Conference, however, the forces representing selfish, imperialist interests and, above all, the two super-Powers, were isolated and in the minority. Conditions were therefore favourable for achieving success in the struggle by the countries of Asia, Africa, Latin America and by other sovereign States aimed at achieving their legitimate rights with respect to the sea. Those countries wanted the Conference to find solutions to several important questions, including the establishment of an exclusive economic zone, the sovereignty of coastal States over the straits within their territorial waters which served international navigation, the affirmation of the principle whereby each country would determine the extent of its territorial waters according to its position and the establishment of a régime for the continental shelf and contiguous zone. They also demanded that the rights of the land-locked or disadvantaged countries be established on principles of justice.

45. The Albanian Government, in accordance with its policy of promoting the aspirations of all peoples of the world and of insisting on their sovereign equality, supported the just demands of the land-locked and disadvantaged countries for the peaceful utilization or exploitation of the seas under bilateral agreements based on respect of the sovereignty of the coastal States. Those countries should enjoy the right of access to the international sea, the right of sharing in the exploitation of the exclusive economic zone within a given region and equal rights of utilization and exploitation of the international sea, taking into account the development interests of the developing countries. The right of the land-locked countries in that latter area stemmed from the principle that the resources of the international sea were the common heritage of mankind and from that of the sovereign equality of all countries. His delegation believed that on the basis of those criteria, those rights should be laid down in the future convention. It was convinced that a just solution to the question would satisfy the current and long-term interests of all sovereign countries, with or without coastlines.

46. The just solution of the problem of the land-locked countries would be found in the solidarity of the countries of Asia, Africa, Latin America and other sovereign States, because they were the only ones sincerely interested in arriving at an equitable solution and they had consented to share their rights with the geographically disadvantaged countries. That attitude of principle assumed particular importance because it would deal the final blow to the forces of hypocrisy including the two super-Powers, which were attempting to fish in troubled waters to foster their philosophy of divide and rule.

47. His delegation believed that consultations should be undertaken between the land-locked or disadvantaged countries and the sovereign coastal States concerned. Several positive proposals had been made by the sovereign coastal States and the land-locked countries aimed at legitimizing the rights of the latter. Those rights should be ensured by bilateral or other agreements while respecting the sovereign rights of the coastal States. His delegation's attitude towards those proposals would be consistent with the views it had just expressed.

48. Mr. LUPINACCI (Uruguay) said that the future convention must provide for three types of rights for the land-locked countries: first, the rights to which they were entitled on an equal footing with coastal States on the high seas and in the international sea-bed area beyond the limits of national jurisdiction; secondly, the rights without which the first category of rights could not be effectively exercised, including free access to and from the sea, free transit across neighbouring coastal States and the use of their ports and other facilities; thirdly, preferential rights to exploit the living resources of the national maritime areas of coastal States of the region or subregion.

49. Rights of the first type were based on the principle of the sovereign equality of all States. As members of the international community, land-locked States naturally enjoyed the same rights as other States in the high sea and in the exploration and exploitation of the resources of the international area. They were also entitled to representation in the organs of the International Authority. The land-locked States must enjoy those rights, of course, without prejudice to the principle that special attention must be paid to the interests of the developing countries. The effective exercise of those rights must be directly based on provisions in the convention, i.e. on "self-executing" provisions.

50. Rights of the second type were based on a principle of instrumentality. Nevertheless, the convention could only establish those rights in general terms; the States concerned must conclude bilateral, subregional or regional agreements determining the precise extent of those rights, which would vary depending on a number of geographical and technical considerations, internal legislation and other factors. Nevertheless, the effective granting of those rights would be assured in the convention by placing transit States under the obligation to conclude those agreements without any condition of reciprocity.

51. Rights of the third type were based on equity, to compensate for the geographically disadvantaged position of the land-locked countries in the utilization of marine resources. Those rights would vary, depending on the different geographical, legal, economic and social factors affecting the parties concerned. The land-locked countries should be given preferential fishing rights in areas that were not reserved exclusively for the nationals of the coastal State; the precise extent of those rights should be established in bilateral, subregional or regional agreements, bearing those factors in mind, so that those agreements would have a really equitable basis and the peoples of the land-locked countries would really benefit from them. Two of the draft articles submitted by Uruguay (*ibid.*, vol. III, sect. 13) were devoted to those matters.

52. The right of the land-locked States to exploit the living resources of certain parts of the maritime zones of coastal States should not be extended to the non-living resources of those zones and of the continental shelf. The principles of equity applied to access to goods that were necessary or important to human health or nutrition ceased to have any meaning when applied to the resources of the areas of other States. The starting point for the move towards social justice must be the realization that there were substantial material differences between the States of the international community.

53. Lack of access to the sea was not the only factor that put a country in a geographically disadvantaged position. He asked what thought had been given to compensating countries which lacked resources, had a very small territory or were subject to continual natural disasters. Equity applied to men, not to geography. There was injustice because some countries were well endowed while others had very little; man's arbitrary carving up of the planet was responsible for that situation. There were of course cases in which land-locked countries were immensely richer in natural resources than some coastal States; the world was not yet ready for an equitable redistribution. The task of the Conference was limited to applying equity where a nation was disadvantaged in its ability to obtain what it needed to cover its food or health needs and for its development, but it

should not help to make other kinds of disadvantage more acute by allowing inequities elsewhere.

54. As the representative of Iran had pointed out at a previous meeting, a better definition of the concept of geographically disadvantaged States was needed. Article 5 of the draft articles submitted in document A/CONF.62/C.2/L.35 was a very good basis for discussion.

55. Uruguay was fully prepared to consider the situation of Bolivia and Paraguay, with which it reaffirmed its solidarity.

56. Mr. CEAUSU (Romania) said that in elaborating a new law of the sea, the Conference must take due account of the interests of all countries. As the documents showed, there was already a basis of treaty law and established practice relating to the problems that were of interest to land-locked countries. The only basis for a solution to those problems was international law, particularly the principles of State sovereignty, international co-operation and mutual advantage.

57. He agreed with those delegations that felt the 1958 Geneva Conventions had dealt adequately with the traditional problems of the sea area beyond the limits of national jurisdiction. Nevertheless, the exploitation of the resources of the seabed beyond the limits of national jurisdiction posed new problems. Those resources were the common heritage of mankind; the new convention must contain special provisions ensuring equality of access to the international zone for land-locked countries, their effective participation in the decision-making process of the Authority to be established, and consideration of the special status of land-locked countries when sharing the benefits of the exploitation of resources of the international area.

58. The land-locked and geographically disadvantaged countries, particularly the developing countries, must be given preferential rights to exploit the living resources of the economic zone on the basis of agreements to be concluded with the coastal States. As far as the exploitation of the mineral resources of the continental shelf was concerned, it must not be forgotten that the coastal States had exclusive sovereign rights over those resources.

59. Although there already existed an indisputable international right of the land-locked countries to freedom of access to the sea—a right that implied transit across the territory of coastal States—the nature of that freedom required the conclusion of special bilateral agreements for its exercise, due account being taken of the reciprocal interests of the States concerned. The future convention on the law of the sea could provide general rules governing the access of land-locked countries to the sea, while the technical and other details should be dealt with in bilateral agreements.

60. Most of the documents submitted on the items under discussion had been prepared by the land-locked countries. His delegation looked forward with interest to the proposals of the coastal States and was convinced that equitable and acceptable solutions could be found for all the problems before the Conference. It appeared from a first reading of document A/CONF.62/C.2/L.48 submitted by Pakistan that it contained useful, constructive and balanced elements that should be taken into consideration when drafting alternative texts of provisions relating to land-locked countries.

61. Mr. VALENCIA RODRIGUEZ (Ecuador) said that the right of the land-locked countries to free access to and from the sea should be duly established in the convention. Articles 15 and 16 in section IX of document A/AC.138/SC.II/L.27 (*ibid.*, vol. III, sect. 16) made special reference to the régime for the land-locked countries. The reasoning behind the proposals was that: first, the land-locked States should receive compensatory preferences in the exploitation of the resources of the seabed and of international ocean space in general; and secondly, those States should participate on an equal footing with other States in the establishment of the International Sea-Bed Authority. His delegation was totally opposed to any attempt to establish categories or classes of member States and would oppose any manoeuvre to place the land-locked States in a disadvantageous position in the organs of the Authority.

62. The future convention had to recognize the principle that bilateral or regional agreements must establish a preferential régime for land-locked States in the adjacent waters of neighbouring coastal States. That was the only way to maintain the necessary relationship between a coastal State's exercise of sovereignty over its territorial waters or exclusive rights in its economic zone and the need for the land-locked States to benefit from the resources of those adjacent waters. In order to exercise those rights, the coastal States must also guarantee the land-locked countries free transit across their territory and equality of treatment in ports, without any discrimination and on equal terms with the nationals of the coastal States.

63. His country had also proposed that coastal States which were not adjacent to land-locked States in a given region or subregion should grant land-locked States preferential treatment in their adjacent waters. If that principle was established in the convention, it would be implemented by regional, subregional or bilateral agreements that took into account the interests of the States concerned.

64. The facilities granted must be reserved for the national enterprises of the land-locked States in order to prevent the multinational companies from becoming the true beneficiaries of the preferential régime. Naturally, that would not prevent the national enterprises of the land-locked States from receiving capital or technology from those countries, although the percentage of capital or technology should be regulated. The purpose of the preferential régime should be to ensure that the people of the land-locked States benefited directly from the exploitation of the coastal State's adjacent waters. His delegation was consequently prepared to consider proposals to that end. He had listened with special attention to the new principles put forward by Peru at the 33rd meeting to structure the preferential régime for the benefit of land-locked States.

65. Another point to which he wished to draw attention was the question of the definitions required to state clearly the problem of the land-locked and geographically disadvantaged countries. Although it had been possible to identify the land-locked countries objectively, so many different claims to being geographically disadvantaged had been put forward that it would seem the majority of States were geographically disadvantaged. What was meant by the term "geographically disadvantaged" must be defined exactly. Some possible elements of such definition were: first, the level of a State's economic development; that would also apply to land-locked States: if the lack of a coast caused problems, those would be unequal in effect as between an industrialized State and a developing one; secondly, in the case of a coastal State, the physical characteristics of its coasts and adjacent waters and the ability of its population to make real use of the resources of those waters; thirdly, the breadth of the continental shelf and the benefit the State could derive from the exploitation of the resources thereof; fourthly, the type of sea and ease of access to it; fifthly, the adverse effect of territorial seas or economic zones of other neighbouring States on the development of a particular State where that State did not have a similar territorial sea or economic zone. It was also essential to define clearly what was meant by the term "neighbouring States"—an issue that would lead to the elaboration of the concept expressing the idea of regionality or subregionality which must be taken into account when coastal States decided on their obligation to grant preferential treatment to land-locked or geographically disadvantaged States. The informal working paper to be produced on the item under discussion should stress the need for clear and accurate definitions of the points he had mentioned.

66. Mr. MHLANGA (Zambia) said that he shared the views of the representatives of land-locked and other geographically

disadvantaged States who had spoken previously. He was heartened by the statements of representatives of other States who had become aware of his country's difficulties and needs and had supported its claims with respect to the future law of the sea. Earlier conventions on the law of the sea had been adopted without sufficient regard to the interests of land-locked States belonging to continents whose land mass extended into a continental shelf. Article 1 of the 1958 Convention on the Continental Shelf[4] had adopted a virtually limitless definition of the continental shelf. Recent advances in marine technology had rendered practically all of the submarine areas exploitable. By that token almost all submarine areas would fall under the national jurisdiction of coastal States—a situation that would spell an end to the principle of the common heritage of mankind. Possible reasons why there were such discrepancies in the development of the concept of the continental shelf might have been: first, that a significant number of land-locked and other geographically disadvantaged States had not been independent when treaties and other conventions were negotiated on their behalf by colonial Powers, and their interests had been completely ignored; and secondly, the history of the continental shelf had begun only in the 1940's. Had those two facts been taken into account, the concept of the continental shelf would have been appropriately modified and consequently upheld.

67. His delegation had been among the sponsors of document A/CONF.62/C.2/L.39 and urged other States to follow the positive example set by the African Heads of State and Government in part C, paragraph 9 of the Declaration of the Organization of African Unity (A/CONF.62/33). Although the explanations contained in document A/CONF.62/C.2/L.29 were largely sufficient, he wished to state other views held by his delegation which had guided its approach to the subject of the right of free access to and from the sea and other related rights and interests of land-locked countries. The community of nations had recognized for centuries the need for land-locked States to have access to the sea and had made several attempts to adopt a satisfactory convention on the subject. Those efforts to promulgate international treaty law had made a significant contribution to international customary law on the subject. Nevertheless, there were still short-comings. The obligation that the 1958 Convention on the High Seas had placed on transit States and land-locked States to conclude agreements ensuring free access to the sea had led to a lack of uniformity in observance of the provisions of the Convention. First, there was a delay between the entry into force of the Convention and the conclusion of bilateral agreements. Secondly, those agreements might negate the provisions of the Convention itself, particularly since there was an inherent inequality between States needing transit to the sea and those that did not. Thirdly, the provision that transit facilities should be given on a reciprocal basis was very misleading and did not take into account the realities of the problem. Only the coastal States were in a position to offer land-locked States the right of transit to the sea. Reciprocity was thus a meaningless condition and should not be included in the future convention as a condition for the exercise by land-locked countries of their right of transit to and from the sea.

68. Future international law must also give due attention to contemporary realities. His own country's right of free access to and from the sea by its southern routes had been violated from time to time despite condemnations by the international community. Zambia had decided to abandon the southern route in order to give effect to the United Nations resolutions calling for economic sanctions against the rebel colony of Southern Rhodesia. His country was grateful for the transit facilities offered by friendly neighbouring and other States. He urged the other States to follow the example set by the African Heads of State and Government in part A, article 2, of the Declaration of the Organization of African Unity. A reaffirmation of the eight principles relating to the transit trade of land-locked countries adopted by the United Nations Conference on Trade and Development in 1964[5] might well be a starting point for work on articles on the right of access.

69. His delegation's strongest wish was that equity would be applied to all the work of the Conference.

The meeting rose at 1.15 p.m.

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

[5] See *Proceedings of the United Nations Conference on Trade and Development*, vol. I, *Final Act and Report* (United Nations publication, Sales No. 64.II.B.11), annex A.I.2.

35th meeting

Friday, 9 August 1974, at 3.25 p.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

Rights and interests of shelf-locked States and States with narrow shelves or short coastlines (*concluded*)*

[*Agenda item 10*]

1. Mr. ROBINSON (Jamaica) asked that when preparing the informal working paper, the officers of the Committee should bear in mind his delegation's proposal in document A/CONF.62/C.2/L.35 in so far as it related to the present item.

2. Mr. BROWNE (Barbados) said he was completing the statement he had made at the 22nd meeting during the discussion of the exclusive economic zone; that concept could not be divorced from the notion of geographically disadvantaged States.

3. His country supported the concept of the exclusive economic zone as a fundamental notion embodying the principles of sovereignty over renewable and non-renewable resources and of access by developing geographically disadvantaged States to the living resources of the economic zones of the countries of a region, on equitable terms. It did not support the concept as a new economic order for some developing countries to the exclusion of others. Words of sympathy for the situation of the developing geographically disadvantaged countries were not enough: what those countries wanted was a clear and unambiguous provision in the convention providing for their access to the living resources of a region. He therefore supported the proposals submitted by Jamaica in documents A/CONF.62/C.2/L.35 and 36.

4. He could not agree with those who claimed that the concept of geographically disadvantaged States was too vague or too difficult to define or that it was of secondary concern compared with the concept of land-locked States. The task of the Conference was to create a new and equitable law, not to create exceptions which discriminated against a poor section of the international community. The concept certainly had meaning

* Resumed from the 32nd meeting.