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Summary records of meetings of the Second Committee
38th meeting

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ments, most of which were contained in the 1958 Geneva Convention on the Territorial Sea and Contiguous Zone, especially article 4, paragraph 5, which had been reproduced in article 4 of A/CONF.62/L.4 and which read: "The system of straight baselines may not be applied by a State in such a manner as to cut off from the high seas the territorial sea of another State". It should also be remembered that under article 5, paragraph 2, of that Convention, when the drawing of straight baselines enclosed as internal waters areas which previously had been considered as part of the high seas or the territorial sea, the right of innocent passage would exist in those waters.

85. The item on archipelagos which covered, in general, the three categories of archipelagos, was related to the item on straits. However, only those archipelagic waters which connected two parts of the high seas or one part of the high seas with the territorial sea of a foreign State could be considered as straits. In cases where archipelagic waters fulfilled those conditions, the régime governing international communications to be elaborated with respect to straits would apply.

86. His delegation supported the legitimate interests of all three categories of archipelagos and was convinced that those interests could be protected in the future convention in a manner consonant with guarantees for international navigation. Such guarantees for international navigation should be made to all States in general and to neighbouring States of an archipelago in particular. Obligations should also be imposed on those navigating through archipelagic waters in order to ensure that the unity of the archipelagic concept was not prejudiced.

The meeting rose at 6.10 p.m.

38th meeting

Tuesday, 13 August 1974, at 10.45 a.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

Enclosed and semi-enclosed seas

[*Agenda item 17*]

1. Mr. KAZEMI (Iran) said that the particular cases of enclosed and semi-enclosed seas raised difficult problems which could only be solved within the framework of regional or bilateral agreements. Semi-enclosed seas were distributed all along the margin of the continents at varying distances from the major oceanic basin, which was why they were often called marginal seas. There were between 40 and 50 such seas in different regions of the world. Semi-enclosed seas like the Baltic, the Black Sea and the Persian Gulf fell into a special category because of the small volume of their waters and their single outlet to the ocean.

2. The problems raised by the semi-enclosed seas with regard to the management of their resources, international navigation and the preservation of the marine environment justified granting them a particular status constituting an exception to the general rule. When worked out on a regional basis, that status would obviously have to take into account the needs and interests of all the coastal States in the region.

3. As to the management of resources, the fact that the total area of the semi-enclosed seas lay above the continental shelf of the coastal States justified the working out of a special régime. In that connexion, the delimitation of the various areas of jurisdiction would present problems which were peculiar to semi-enclosed seas and which would have to be solved on the basis of the principles of justice, equity and equidistance. Iran had already established the limits of its continental shelf in agreement with Saudi Arabia, Qatar and Bahrain on the basis of those principles. His Government's Proclamation of 30 October 1973 relative to the establishment of an exclusive fishery zone had also been based on those principles.

4. Apart from problems of delimitation, the exploitation of exclusive fishery zones in semi-enclosed seas raised a number of questions with regard to the preservation of species, and solutions would have to be tailored to fit the particular situation of those seas.

5. With regard to international navigation in semi-enclosed seas, there was of course a marked difference between the coastal States of those seas for which freedom of passage through straits connecting those seas to the oceans was vital to their trade and communications on the one hand, and all other States on the other hand. Such freedom of passage must exist for the former category of States. However, a different régime should apply to the navigation of other States whose ships could pass through straits connecting the oceans with semi-enclosed seas only for the purpose of calling at one of the ports of the semi-enclosed sea. As a matter of fact, semi-enclosed seas such as the Persian Gulf were seas of destination rather than transit.

6. The semi-enclosed seas were highly vulnerable to pollution owing to the small volume of their waters, which lowered their capacity for absorption, and the absence of currents to change the waters. A number of semi-enclosed seas like the Persian Gulf were the scene of intensive petroleum production and of heavy tanker traffic, which increased the threat of pollution.

7. Irrespective of the rules adopted on the international level for the control of pollution, such as those laid down in the 1973 International Convention for the Prevention of Pollution from Ships, the special circumstances of semi-enclosed seas often required the application of stricter standards, and a higher level of co-operation among States. In that connexion, his delegation welcomed the initiative taken by the Government of Kuwait in acting as host for a conference on the preservation of the marine environment in the region to be held in October 1974. The Convention on the Protection of the Marine Environment of the Baltic Sea Area (see A/CONF.62/C.3/L.1), which had been concluded at Helsinki in March 1974 between the coastal States on the Baltic Sea, could also provide a point of departure for co-operation among the States of the Persian Gulf.

8. With regard to scientific research, semi-enclosed seas, unlike open seas, were not of great interest since the geomorphological structure of their basins was quite uncomplicated and had already been studied by numerous scientific expeditions. Under the circumstances, scientific research in semi-enclosed seas was mostly conducted for economic purposes.

9. Mr. ROSENNE (Israel) recalled that in the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction many delegations had insisted on the inclusion of the item under consideration in the detailed catalogue of subjects and issues relating to the law of the sea which had become the agenda of the Conference: he referred particularly to the proposals contained in documents

A/AC.138/52, 56 and 58 [1] submitted to the sea-bed Committee in 1971 and to the list of subjects and issues in document A/AC.138/66 [2] submitted to the Committee in 1972. This indicated that there was a wide and long-standing acceptance of the proposition that in any comprehensive examination of the law of the sea, special treatment must be reserved for enclosed and semi-enclosed seas of international interest, and that what might be appropriate and necessary for the wide ocean spaces would not automatically apply in those geographically distinct marine areas.

10. That point had been further emphasized in the general debate in the plenary meetings, where that specific character of the enclosed and semi-enclosed seas had been stressed by no less than 18 speakers, all from States bordering on such seas. His own delegation had stressed at the 36th plenary meeting that the future convention should be adaptable to the particular characteristics determined by the geographical and geophysical conditions of different areas of ocean space and of the States which depended on them—an argument which no one had contradicted.

11. In the Second Committee one delegation had viewed the problem as a regional or sub-regional one; another had rightly drawn attention to the geographical peculiarities of the Mediterranean Sea; and a third had warned of the danger that the *mare liberum* might become closed off. His own delegation had emphasized at the 22nd meeting that a semi-enclosed sea poor in resources such as the Mediterranean did not lend itself to far-reaching claims.

12. During those debates, the sea areas specifically mentioned included the Caribbean, the Baltic, the Mediterranean-Adriatic-Aegean-Black Sea complex, the Persian Gulf and the Red Sea, as well as a number of other areas variously denominated bays or gulfs. Each area had its own geopolitical role, especially where intercontinental communications were concerned. Consequently each area of sea had its own physical or political problems, a point which had been accepted as far as pollution control and prevention was concerned. In that connexion he noted that the Convention on the Protection of the Marine Environment of the Baltic Sea Area had been circulated as document A/CONF.62/C.3/L.1; that as recalled by the Secretary-General of the Inter-Governmental Maritime Consultative Organization (IMCO) at the 22nd plenary meeting, IMCO had recognized in its 1973 International Convention for the Prevention of Pollution from Ships certain areas, including the Mediterranean and Red Seas, as special areas to be regulated by specially rigorous provisions; that the Food and Agriculture Organization of the United Nations (FAO) was undertaking important work for the protection of the fishing and biological resources of the Mediterranean; and that the Final Act of the Inter-Parliamentary Conference of Coastal States on the Control of Pollution in the Mediterranean Sea, organized jointly by the Italian Chamber of Deputies and the Inter-Parliamentary Union with the co-operation of the United Nations Environment Programme (UNEP) adopted in April 1974, provided a commendable example of co-operation between the States concerned.

13. Notwithstanding the widespread concern about enclosed and semi-enclosed seas, the reports of the sea-bed Committee, particularly volumes IV, V and VI of its 1973 report (A/9021 and Corr.1 and 3), did not include proposals relating to that item in Working Paper No. 4 of the Working Group of Sub-Committee II or in the consolidated texts prepared by the Sub-Committee in 1973. Yet the topic had been mentioned (*ibid.*, vol. III, sect. 3) later replaced by document A/CONF.62/C.2/L.8, on the breadth of the territorial sea in semi-enclosed areas; in documents A/CONF.62/C.2/L.14 and 33, dealing with delimitation problems in that type of sea area; in document A/CONF.62/C.2/L.20, dealing with certain aspects of ingress into and egress from such seas; and in documents A/AC.138/SC.II/L.24 and 27 (*ibid.*, sects. 13 and 16) concerning the 200-mile territorial sea. His delegation formally requested that those proposals should appear in the informal working paper on item 17, not only to repair the omission in the report of the sea-bed Committee but also to make it plain that a major trend existed in that Committee and in the Conference which recognized that enclosed and semi-enclosed seas presented special problems. His delegation also considered that appropriate substantive provisions, or a general savings clause or reservation, should be included in the future convention.

14. The treatment of the topic could not be limited to such problems as those posed by the potential overlapping of delimitations of territorial sea, continental shelf or exclusive economic zone. Fishery conservation in enclosed or semi-enclosed seas was not susceptible to neat allocation to coastal States to deal with at their exclusive sovereign discretion. Pollution control could not be effected on anything but a general basis in which all the riparian States and the users had reciprocal interests and responsibilities toward each other, regardless of their political relations.

15. Above all, the semi-enclosed seas which had been mentioned at the Conference and their related straits and waterways played a vital role for the whole world in the system of communications by sea and air. Accordingly the freedoms of navigation and overflight must retain their priority in those semi-enclosed seas, especially as they did not affect the consumptive use of the sea and its resources. Those freedoms were indivisible: they would survive only when available to all States in all the waterways of a given system on an equal basis and without discrimination. Any interference, however petty, would disturb the equilibrium of the system as a whole, on which the rights of all hung. As he had indicated, the States bordering on enclosed and semi-enclosed seas were aware of the delicacy of the position.

16. Israel hoped that in the same way as in other parts of the world, notably the Baltic, so in their part of the world the States concerned would be able to identify their mutual interests and establish an appropriate régime with adequate machinery. His delegation understood the positions of those few States whose economies were dependent on the sea, and the concern of the land-locked States to ensure their access to the sea and to guarantee their just share in the common heritage of mankind. His country shared the desire of the developing States, of which it was one, to obtain what was rightfully theirs from the resources of the oceans. In return, it requested universal and unqualified recognition of the fact that there were marine areas in which there were no limitless horizons and in which conceptions based on the supposition of unbounded ocean spaces were utterly unreal. The future convention must accord due recognition to that geographical fact, which could not be corrected by any system of man-made law or equity, but which any viable law could not disregard.

17. Mr. ANDREASEN (Denmark) said that his delegation sympathized with the aspiration of developing countries to build up their economies and understood their desire to have the opportunity to use the resources of the sea within a wide area adjacent to their territorial sea. To that end, many members of the Committee supported proposals for the establishment of an economic zone of 200 nautical miles within which the coastal States would have exclusive rights to exploit those resources.

18. In areas where coastal States faced open ocean space, an economic zone of 200 miles might be a reasonable and acceptable solution. It must, however, be realized that the geographical situation varied from region to region and a general international rule giving the coastal States exclusive rights within

[1] *Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 21*, annex I, sects. 10, 14 and 16.

[2] *Ibid., Twenty-seventh Session, Supplement No. 21* and corrigendum, annex III, sect. 1.

vast areas of the sea without taking the particular geographical situation into account could lead to highly unacceptable results. The application of global rules for enclosed and semi-enclosed seas could have a distorting effect, especially with respect to the exploitation of the living resources.

19. Denmark was situated in an area with enclosed and semi-enclosed seas where fishing by all countries in the region had traditionally been carried on close to the coasts of neighbouring States. All the countries interested in fishing in that particular area had realized that the preservation and exploitation of species must be seen as an organic whole, and fisheries had therefore been organized through regional arrangements. Establishment of exclusive economic zones in such relatively narrow waters, without taking into account the interests of neighbouring coastal States and countries opposite to each other, would destroy the historic pattern of the fisheries which had long functioned satisfactorily. Since such a zone was both unwanted and unnecessary, his delegation supported the general idea expressed in the draft articles submitted by 21 Powers in document A/CONF.62/C.2/L.39 that the global rule of a coastal State's rights should be supplemented by obligations on the part of the coastal States to take the interests of neighbouring countries into account.

20. The draft articles submitted by Jamaica in document A/CONF.62/C.2/L.35 were also based on that general idea. In that document, however, the rights of neighbouring countries were limited to developing States. Yet the situation with respect to both the geographical configuration of an area and the distribution of the living resources within a region could be as difficult for developed countries as for the developing States; his delegation therefore did not see the reason for that particular provision. The rights of neighbouring States should cover both developing and developed countries. Any other solution would mean that some developed countries in a given region would be in a more favourable position vis-à-vis the less fortunately situated developed neighbouring countries than developing States would be in the same circumstances.

21. That consideration was even more important in enclosed and semi-enclosed seas; in those waters, the fishery régime should be regulated through regional arrangements, taking due account of the rights of neighbouring States and the historic pattern of the fisheries.

22. Mr. HEYMAN (Sweden) said that the main reason for including item 17 in the agenda was that there were basic differences between States situated along the oceans on the one hand and those bordering enclosed and semi-enclosed seas on the other. Those differences could be of a political, economic, geological or ecological nature. Each enclosed sea had its own particular problems and each case warranted its specific solution.

23. States which fronted on the oceans were far more likely to have common problems than were States fronting on enclosed and semi-enclosed seas. It was easier to solve those problems on a global basis, since the common denominator was less difficult to find. In the case of enlcosed seas, on the other hand, there had to be particular solutions for each region, because the characteristics of those seas varied widely. Most of the stipulations that were to govern the uses of an enclosed or semi-enclosed sea had to be agreed on by the States bordering the sea in question. Since there would be considerable difficulties if the Conference were to draft articles applicable to enclosed or semi-enclosed seas in general, that task should be entrusted to the States situated in the region of each such sea.

24. His delegation therefore concluded that the convention would, in all essentials, take as its point of departure those problems of the law of the sea which were common to the oceans. The convention could not reasonably be expected to solve also the question of the various enclosed and semi-enclosed seas. In drawing up the convention, however, the Conference should provide for exceptions to be made from its general provisions in all instances where the particular characteristics of enclosed or semi-enclosed seas warranted particular solutions.

25. While the views he had expressed could not easily be condensed into treaty articles, his delegation would appreciate it if they could be reflected in any paper that might be drafted concerning the main trends that had emerged with respect to the item.

26. Mr. PANUPONG (Thailand) said that the question of enclosed and semi-enclosed seas seemed to have been forgotten, both at the preparatory stage and at the Conference itself. The page allocated to the subject in volume V of the sea-bed Committee's report had been left blank and the only references to it occurred in the context of other items. Yet there were many areas of the world which could be classified under those categories, including the South China and Andaman Seas, which surrounded his own and other South-East Asian countries, the Sea of Japan, the Caribbean, Baltic and Mediterranean Seas and the Persian Gulf.

27. Although every region and every country had its own particular problems, most of the countries bordering on enclosed and semi-enclosed seas had some problems in common. The fact that no draft articles had as yet been submitted on the subject as a separate item was not, he believed, due to any lack of interest, but rather to lack of time.

28. There were two aspects to the question: the rights and interests of the countries situated in the areas of enclosed or semi-enclosed seas, and the régime of the enclosed or semi-enclosed seas themselves.

29. In the first place, it was imperative for the countries concerned to have access to the open sea. The problem was different from and more complicated than that of the countries bordering on the open seas. Special consideration should therefore be given by the enclosing States and by the convention itself to the right of free passage for the enclosed States through the waters of the enclosing States, on the same lines as the right of free transit for land-locked States through the territories of coastal States.

30. With regard to natural resources, many enclosed seas and all semi-enclosed seas were bordered by more than one State and the areas of such seas were relatively small. Difficulty always arose, therefore, over the equitable distribution of the resources and over the régime for those seas.

31. The question of delimitation had already been fully discussed in the Committee in connexion with other items. What he wished to emphasize was the paramount importance of the principle of equitability and of the special circumstances to be taken into account in relation to the delimitation of enclosed and semi-enclosed seas, because of the peculiarities of their geographical configuration and the presence of unusual geographical features. The small area of such seas was also an important factor. The proponents of the compulsory application of the equidistance method had overlooked the fact that although it was based on the principle of equitability, it would in reality be equitable only in a normal situation, or where there was equality in terms of geographical situation. Geographical equality, however, was the exception rather than the rule. There could be no justice and, consequently, no harmonious relations if the equitable principle was disregarded or made a secondary consideration.

32. As far as exploitation and conservation of living resources and preservation of the marine environment were concerned, the narrowness of the enclosed or semi-enclosed seas also meant that fragmentation of the area would be impractical and would, moreover, be of little service to the countries concerned. The regional arrangements endorsed by the convention could therefore be very important in that connexion. Except for the sea-bed area of the enclosed or semi-enclosed seas,

which should be precisely determined by agreement among the parties concerned in the light of special circumstances, the régime for the enclosed and semi-enclosed seas in respect of other uses should be the same as in the case of the high seas. In other words, outside the territorial waters the seas should be open equally to all countries bordering the enclosed area for the purpose of exploiting living resources. Special regional machinery should be set up to regulate the use of the sea, the conservation of the living resources and the preservation of the marine environment. Such machinery could also be used for the peaceful settlement of disputes concerning the area. The difficulties of ensuring rational use of the living resources of the sea without such a common approach were obvious.

33. All countries situated in the area of enclosed or semi-enclosed seas faced the same problem of access to the open sea and most of them were not in a position to extend their area of jurisdiction to the proposed 200-mile limit. They were thus geographically disadvantaged and should be given special treatment in the international law of the sea, in the same way as the land-locked, archipelagic and other geographically disadvantaged States.

34. Mr. QUENEUDEC (France) said that the expression "enclosed or semi-enclosed seas" was not a traditional concept of international law. The notion of "enclosed seas" seemed rather to be a purely geographically one; the legal rules applicable to them were not part of international public maritime law and the Conference should not concern itself with them. The idea of "semi-enclosed seas" was extremely vague. The inclusion of the item in the agenda tended to give an ambiguous formula legal status.

35. Undoubtedly, the geographical situation of the coastal States of a semi-enclosed sea obliged them, in certain circumstances, to become aware of the links that bound them or to consider themselves coastal States in relation to a sort of interior sea. However, to make those maritime spaces subject to special rules would be to resuscitate the Roman formula of *mare nostrum,* with the consequent risk of establishing a *mare clausum.* What, in any case, was the purpose of the exercise?

36. It was inconceivable that the idea was to restrict the freedom of navigation and overflight in areas considered to be semi-enclosed seas. The institution of 200-mile economic zones would place all the renewable and non-renewable resources of the maritime areas concerned under the jurisdiction of the coastal States and there was thus no need for those coastal States to demand special provisions for semi-enclosed seas in the convention; regional agreements should suffice. As far as preservation of the marine environment was concerned, the maritime areas in question were, like others, covered by general international rules, although specific rules might be necessary in certain special circumstances, such as those recognized in a number of international conventions. In that case, too, there was no need to establish a new legal category to solve the problems that might arise.

37. For the reasons stated, his delegation felt that there would be more disadvantages than advantages in introducing into the law of the sea a concept that was ambiguous and not in conformity with the interests of the international community.

38. Mr. AL-QADHI (Iraq) said the item under discussion was of great importance to his delegation. His country lay on a narrow semi-enclosed gulf that was its only access, through the Hormuz Strait, to the high seas. It was vital to his country to have free transit through that Strait and freedom of navigation in the area as a whole. Furthermore the existence of islands in the area should not hamper the freedom of navigation.

39. The establishment of regional arrangements was essential to ensure the implementation of a joint policy for the conservation and management of living resources, pollution prevention and control, the conduct of marine research, and the settlement of disputes. All coastal States should have equal rights in the exploitation of marine living resources. Nevertheless, regional arrangements should not be considered a substitute for the provisions for the settlement of disputes in the proposed convention. The convention should embody principles regulating the legitimate uses of semi-enclosed seas and the rights of coastal States. The Arabian Gulf was a special area where broad regional co-operation was necessary. Such co-operation would be possible only if all States within the area refrained from unilateral action.

40. Mr. GOERNER (German Democratic Republic) said that the German Democratic Republic, being a coastal State in the Baltic Sea, attached special importance to the question of enclosed and semi-enclosed seas. Like other similarly situated States, it was able to establish an economic zone of limited extension only, and depended for its access to the high seas on free passage through straits. Those facts, coupled with the pollution problem in enclosed and semi-enclosed seas, made it desirable for States so situated to co-operate, irrespective of their different political and economic outlooks.

41. The proposed convention on the law of the sea should make provision for the conclusion of regional or bilateral arrangements between such coastal States based on the generally recognized principles of the law of the sea and taking into account the interests of the community of States as a whole in maintaining freedom of navigation and other freedoms of the high seas. For instance, the convention could include a general provision that for such coastal States the principle of the economic zone beyond the territorial sea or of the contiguous zone of up to 12 miles should be applied only to the mineral resources of the sea-bed and its subsoil, and to their exploration and exploitation. Conservation and exploration of the living resources beyond the territorial sea or the contiguous zone could be administered under regional fishery conventions open for accession to all coastal States of enclosed and semi-enclosed seas. The Convention on Fishing and Conservation of the Living Resources in the Baltic Sea and the Belts, signed in 1973, contained provisions along those lines.

42. Similarly, the Convention on the Protection of the Marine Environment of the Baltic Sea Area, signed at Helsinki in 1974, was a good example of how urgent problems of that geographical region could be solved by peaceful co-operation and mutual understanding.

43. His country shared the view that already existing regional agreements between coastal States of enclosed or semi-enclosed seas should not be affected by the new convention on the law of the sea.

44. His country also held that freedom of navigation, particularly in seas which connected other seas and oceans, should not in any way be restricted or affected.

45. States in such areas also needed the support and assistance of other States in solving their problems. Despite far-reaching measures for the protection and conservation of living resources, such States still had to rely on long-distance fishing in regions with rich fish stocks. Therefore the new convention should also make provision for geographically disadvantaged States to have the right to fish outside their geographical region in the economic zone of other States, if those States themselves did not take the entire allowable annual catch. That should apply to both developing and developed countries which were geographically disadvantaged.

46. Mr. TUNCEL (Turkey) noted that all but one of the delegations that had spoken had underlined the importance of the problems facing coastal States in semi-enclosed seas. It was not clear to him what the representative of France—who had taken a very different position from that of other delegations—had meant when he had recommended earlier in the meeting that States bordering on enclosed and semi-enclosed seas should solve their problems on the basis of bilateral or regional agreements. He wondered whether the representatives had as-

sembled to support vague general provisions or were expected to support proposals reflecting the interests of oceanic coastal States. When the time for decisions came, those who wished to use the silent majority of the Conference to serve their own ends might well be surprised.

47. He would agree that there was a need for definitions. Geographers had already provided some definitions, and a number of conventions recognized the concept of semi-enclosed seas. His delegation thought that the economic zone concept could not possibly apply to semi-enclosed seas, because of the small size of the latter. While his delegation could accept the establishment of economic zones, it would require reciprocal concessions. The economic zone concept was a regional one and did not apply to States bordering on semi-enclosed seas, which should have a territorial sea and an area subject to a continental shelf régime; the possibility of an economic zone should be the last one to be considered.

48. His delegation would be submitting a draft article on the item stating that the general rules set out in the relevant chapters of the convention should be applied in semi-enclosed seas in a manner consistent with equity. States bordering semi-enclosed seas might hold consultations between themselves with a view to determining the manner and method of application appropriate for their region for the purposes of the article.

49. Mr. BARABOLYA (Union of Soviet Socialist Republics) said he wished to draw attention to certain peculiarities of the problem under discussion. First, a clear distinction must be made between enclosed and semi-enclosed seas. From a juridical point of view, enclosed seas were comparatively small, had no outlet to the ocean, and did not serve as international shipping routes in the broadest sense. In the case of such seas, the legal régime might include certain peculiarities on the basis of existing international agreements and international custom. Semi-enclosed seas, on the other hand, were large bodies of water with several outlets through which passed international waterways. They had never been subject to any special régime. Almost any sea could be called semi-enclosed, and to compare such seas with enclosed seas would be quite unjustified. His country could not accept the establishment of a special régime benefiting any given country in waters that had traditionally been used by all countries for international shipping on a basis of equality. The question of enclosed seas had both a geographical and a juridical aspect. Was the Mediterranean, for example, an enclosed or semi-enclosed sea? He would say it was neither. It contained many other seas and could be compared to an ocean. It was an immense body of water used as a high sea by all countries for international shipping.

50. Another peculiarity of the issue was that the Geneva Conferences had not laid down principles for enclosed seas, although the International Law Commission had confirmed the desirability of extending a special régime to some enclosed seas. No specific proposals had been put forward in the sea-bed Committee, and therefore there was only one chapter heading for the issue in the Committee's report, in volume V. Nevertheless, that question had been touched upon, mainly in connexion with the problem of the delimitation of marine areas, as, for example, in the Turkish proposal (A/CONF.62/C.2/L.56) and had recently become of some current interest as a result of the prospect of establishing economic zones of a breadth of up to 200 miles. The question of economic zones would cause no problems where the coastlines faced the open sea, but a number of problems could arise in enclosed or semi-enclosed seas, as the representative of Turkey had pointed out, particularly in connexion with the delimitation of sea areas between States.

51. The point at issue was not a régime for enclosed seas, but the possibility of taking a regional approach to certain questions in specific marine areas where the application of certain provisions of international marine law by one coastal State might affect the rights and interests of other States. His country's position was that in those specific areas regional decisions on questions of sea law could be taken only within the framework of the international convention to be adopted by the Conference. Specific solutions to problems must be arrived at by agreement between the coastal States concerned, without prejudice to the legitimate interests of other countries of the world.

52. Mr. THEODOROPOULOS (Greece) said that Greece and all the other countries bordering on the Mediterranean were only too aware of the pollution and other problems connected with that sea. However, to introduce the legal concept of the semi-enclosed sea into the convention would be extremely rash because no clear legal definition yet existed. As far as he could judge, the proposal read out by the representative of Turkey did not contain a sufficiently precise legal definition. To include a vague and undefined concept in the final instrument of the Conference would lead to insuperable problems.

53. As the representative of France had already ably explained, almost all semi-enclosed seas were covered by the draft treaty articles currently under discussion and by existing international instruments and regional agreements. Consequently, all the various problems, including those relating to fisheries and pollution, could be dealt with bilaterally or on the basis of existing rules of international law.

54. In conclusion, he requested the officers of the Committee to reflect the views of the French delegation and his own in the future working paper on the subject.

55. Mr. MESLOUB (Algeria) expressed his delegation's profound interest in the item under consideration, to which it had referred throughout the proceedings of the sea-bed Committee in 1971 and also at the current session of the Conference.

56. If the Conference was to achieve its goal, it must elucidate the spcific problems peculiar to enclosed and semi-enclosed seas so that the legitimate interests of the coastal States were duly taken into account. He therefore wished to support the suggestion of the representative of Turkey that provisions on the subject should be prepared for inclusion in the convention. At the same time, the convention should leave the door open for bilateral and regional agreements—to be concluded in accordance with equitable principles between the coastal States concerned—which would solve any problems generated by enclosed and semi-enclosed seas, whether they related to the delimitation of maritime space, the management of resources, the preservation of the marine environment or navigation.

57. Mr. FARES (Democratic Yemen) reverted to the statement by one delegation that the Red Sea was a semi-enclosed sea and that there should therefore be freedom of passage through it for all vessels and aircraft. His delegation considered that approach unrealistic.

58. First, the Red Sea was a semi-enclosed sea only in respect of matters relating to pollution. Secondly, the Red Sea was not semi-enclosed in respect of international shipping. All delegations understood perfectly well the importance of the Red Sea for international shipping and not just for the shipping of certain States adjacent to it. Thirdly, his delegation could not accept the concept of free passage for all vessels or free overflight for all aircraft in a vital region that was subject to heavy straits traffic. Application of that concept would lead to chaos and would threaten international shipping and the security, political independence and territorial integrity of the coastal States. Fourthly, the question of navigation in the straits must be decided on the basis of the principle of innocent passage—a principle that reflected the interests of the international community and took into account the interests of coastal and straits States.

59. Mr. KAZEMI (Iran) observed that the representative of Iraq had designated the Persian Gulf by a name that was historically and geographically erroneous. He added that his dele-

gation's position on that question had been stated at the 23rd plenary meeting.

60. Mr. AL-QADHI (Iraq), exercising the right of reply, expressed surprise and regret that the representative of Iran should seek to deny Iraq the right to use the original name of the Gulf, namely the Arabian Gulf, and at the same time arrogate to himself the right to call it by another name that was inconsistent with the historical facts. He appealed to the Iranian representative not to involve the Committee in discussion of such an irrelevant matter.

Artificial islands and installations

[*Agenda item 18*]

61. Mr. VAN DER ESSEN (Belgium) said that in July 1973 his country's delegation had circulated a working paper to the sea-bed Committee concerning artificial islands and installations which had been reproduced in the report of the Committee (A/9021 and Corr.1 and 3, vol. II, p. 9). The delegation of Belgium wished to comment on the working paper, since it had not had the opportunity of presenting it formally to the sea-bed Committee.

62. The question of artificial islands raised two separate problems: first, that of the jurisdiction to which they were to be subject and, secondly, that of the right of States to construct artificial islands and installations and the conditions which they must observe in doing so.

63. The first aspect, that of jurisdiction, did not seem to raise any real problems from the standpoint of development of the law of the sea. The draft did not cover floating islands which, because they were theoretically mobile, could be treated as vessels, but dealt rather with permanent islands, which were sometimes of large dimensions and were rooted on the sea-bed or ocean floor. There were plans to establish an artificial island, more than 700 hectares in area and 27 kilometres from the Belgian coast for use as an oil tanker port. Another such island was planned by Belgium on which a nuclear power station for desalination of sea-water would be constructed.

64. Of course, artificial islands in the territorial sea came under the jurisdiction of the coastal State. Islands located outside those limits should be subject to the jurisdiction of the proposed International Sea-Bed Authority, which would have to decide what penal code would be applicable there and what courts would be competent in the matter.

65. Artificial islands located on the continental shelf of a State would be subject to that State's civil and criminal jurisdiction unless it delegated its powers to another State. If, for example, a British firm wished to build an artificial island on the Belgian continental shelf as a storage depot for North Sea oil, Belgium might raise no objections, but might find it inappropriate and pointless, when offences were committed, to bring British subjects before the Belgian courts. The continental shelf beyond the territorial sea did not form part of a coastal State's territory, so that offences committed there were not strictly subject to its jurisdiction.

66. The second problem involved in the construction of artificial islands was more delicate. It might prejudice various uses of the sea by other countries, by impeding international navigation, causing sandbanks to form or blocking access to a neighbouring country's ports. Such adverse effects would be specially marked in narrow or shallow waters. Article 5, paragraphs 5 and 6, of the Geneva Convention on the Continental Shelf[3] placed formal limits on the coastal State's freedom of action. The appearance of numerous artificial islands in narrow or shallow waters would be harmful to the marine environment, to fisheries and to other uses of the sea.

67. No special provisions were needed for artificial islands subject to the jurisdiction of the Sea-Bed Authority, since their distance from the coast would preclude their causing serious damage.

68. With regard to the continental shelf, although it seemed fair to provide for authorization of construction by the coastal State, it would at least be necessary to follow the restrictive provisions of the Convention on the Continental Shelf, and establish a right of appeal against any project which a State considered detrimental to its legitimate interests. IMCO might be the appropriate organization to hear such appeals. A coastal State authorizing the construction of artificial islands on the continental shelf or in the territorial sea should publish plans thereof and pay heed to the observations of other States. The exercise of sovereign rights must be tempered by good neighbourliness. In the last resort, the international organization—such as IMCO—that was competent to hear appeals would be entitled to recommend alterations and adjustments to projects, but not to prohibit construction.

Régime of islands

[*Agenda item 19*]

69. Mr. TEMPLETON (New Zealand) introduced the draft articles contained in document A/CONF.62/C.2/L.30. Following the structure of the item on the régime of islands, he introduced part B first. It consisted of an article on territories under foreign domination or control, providing that the marine resources of a territory under colonial or foreign domination must not be exploited by the metropolitan or foreign Power for its own benefit. That provision took account of article XI of the 14-Power African proposal on the exclusive economic zone (*ibid.*, vol. III, sect. 29). The sponsors of the draft did not believe that the right solution to the problem was to deprive dependent territories of an economic zone and continental shelf or to place special restrictions on the size of the zone or shelf, as that could mean that the peoples of those territories, many of them small in land area and deficient in land-based resources, would not only be deprived of the potential wealth of the coastal sea-bed, but that their fisheries would be subject to uncontrolled exploitation by sophisticated distant-water fishing fleets. The economic consequences of such an approach on the South Pacific territories, with which his delegation was particularly concerned, would be very severe. The correct solution was to retain for a territory under colonial or foreign domination the same economic zone and continental shelf as for any other territory but to ensure that their resources would not be misused. The purpose of part B of the draft was therefore to impose on the metropolitan Power a formal and binding treaty obligation to that effect. The resources of the economic zone and continental shelf were to be vested in the inhabitants of the territory, to be exercised by them for their own benefit and in accordance with their own needs and requirements. The obligations created by that article should be as strict as any of the other obligations imposed by the new convention and should be subject to the same enforcement machinery. Any attempt by an administering Power to profit from or in any way infringe the rights vested in the inhabitants of a territory could be challenged before the tribunal for the settlement of disputes to be established under the new convention.

70. Part A of the draft did not purport to deal with delimitation problems, archipelagos, or situations dealt with in article 4, paragraph 1, of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone,[4] but simply stated the general rule to be applied where that kind of problem did not arise. Paragraph 1 of the draft was based on article 10, paragraph 1, of the Convention. Paragraph 2 of the draft stated that every island generated a territorial sea, since the territorial sea was an attribute of State sovereignty over land territory, and no logical distinction could be drawn between sovereignty over islands and sovereignty over other territories.

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

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

The same applied to the continental shelf: the sovereign rights which the coastal State exercised over the continental shelf for the purpose of exploring it and exploiting its natural resources were an attribute of its sovereignty over its land territory, whether mainland or island, of which the continental shelf formed the natural prolongation. Article 1 of the 1958 Geneva Convention on the Continental Shelf recognized explicitly that islands, no less that any other territory, might generate a continental shelf. Moreover, if, as was now the clear will of the Conference, the future convention on the law of the sea was to recognize the concept of an economic zone in which the coastal State would exercise sovereign rights over marine resources, there was was no logical reason to distinguish between sovereign rights appertaining to islands and sovereign rights appertaining to other land territory.

71. Those were the considerations on which the first four paragraphs of part A of the draft were based. An island was defined in the same terms as in the Convention on the Territorial Sea and the Contiguous Zone, and it was stated that an island had a territorial sea, an economic zone and a continental shelf on the same basis as any other land territory. The sponsors of the draft were aware that some representatives, who might accept the logic of that approach, would nevertheless be inclined to challenge the provisions on the grounds that allocating a full quota of ocean space to islands would produce inequitable results. Such delegations should, however, consider whether it would be reasonable to legislate for the benefit of the 80 per cent of independent countries which did not constitute island States at the expense of the 20 per cent which did; whether depriving a very small mid-ocean island State of control over the fisheries resources in the 200-mile sea around it would be to the benefit of the international community as a whole or to the benefit of a few distant-water fishing countries; and, if a punitive rule should apply to a mid-ocean island State with limited land resources, located very far from the markets for its exports, what corresponding punitive rule should apply to a large continental country with rich land resources and access to an extensive area of sea and sea-bed and its considerable resources. His delegation had given careful consideration to the question whether the ocean space of certain categories of islands could be restricted in such a way as to do justice to all. If that were possible, mid-ocean island States should be the last category to be subject to such restriction.

72. Paragraph 5 of part A of the draft was designed to fill a gap in the existing law concerning baselines for the territorial sea as that law applied to atolls and other island systems with the same features as atolls. An atoll made up a geographical and ecological entity. A lagoon, encompassed by a reef system, had all the characteristics of land-locked waters and constituted the principal source of food for the inhabitants of an atoll. To protect the resources upon which their well-being depended, the inhabitants must be able to control the lagoon. The sponsors of the draft therefore felt it to be entirely reasonable that the baseline for measuring the breadth of the territorial sea should be the seaward edge of the reef and not the seaward edge of the islands on the atoll.

The meeting rose at 1 p.m.

39th meeting

Wednesday, 14 August 1974, at 10.45 a.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

Régime of islands (*continued*)

[*Agenda item 19*]

1. Mr. KIAER (Denmark) said that the Geneva Conventions of 1958 contained two articles of special importance for the question of islands, namely article 10 of the Convention on the Territorial Sea and the Contiguous Zone[1] and article 1 (*b*) of the Convention on the Continental Shelf.[2] His delegation was glad to see that the principles embodied in those articles were faithfully reflected in paragraphs 1, 2 and 3 of document A/CONF.62/C.2/L.30, for the following reasons.

2. If an island was an independent State, it should not be in a less favourable position than a continental State, and, if an island had not yet achieved its independence, it should be accorded the same treatment as other islands in order not to prejudice its rights when it became independent.

3. Furthermore, the special economic and social characteristics of islands must be taken into account because their populations were frequently isolated and had few alternative employment opportunities. Accordingly, at least the same rights should be granted to islands as to continental territories.

4. The delimitation of island ocean space or sea-bed area in the case of adjacent or opposite States should continue to be based, generally speaking, on the clear-cut equidistance principle. His delegation therefore supported the provisions on that subject contained in documents A/CONF.62/C.2/L.25 and 31.

5. If the Conference decided to grant coastal States extensive rights in the form of broad exclusive economic zones, then consideration should be given to what extent, if at all, those zones could be claimed on the basis of the possession of islets and rocks which offered no real possibility for economic life and were situated far from the continental land mass. If such islets and rocks were to be given full ocean space, it might mean that the access of other countries to the exploitation of the living resources in what was at present the open sea would be curtailed, and that the area of the sea-bed falling under the proposed International Sea-Bed Authority would also be reduced.

6. Mr. RABAZA (Cuba) said that the Fourth Conference of Heads of State or Government of Non-Aligned Countries, held at Algiers in September 1973, had noted the resolution approved by the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples in August 1973[3] reaffirming the inalienable right of the Puerto Rican people to self-determination and independence, in accordance with United Nations General Assembly resolution 1514 (XV), and had adopted a resolution calling upon the United States Government to desist from any measures that might prevent the Puerto Rican people from exercising freely and fully their inalienable right to self-determination and independence, as well as their economic and social rights. The resolution particularly urged that there should be no violation of those rights by corporate bodies under United States jurisdiction. Moreover, it called upon the Committee on decolonization and other competent bodies to accelerate and intensify measures designed

[1] United Nations, *Treaty Series*, vol. 516, p. 206.
[2] *Ibid.*, vol. 499, p. 3.
[3] *Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 23*, chap. I, para. 84.