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Summary records of meetings of the Second Committee
4th meeting

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4th meeting

Tuesday, 16 July 1974, at 10.45 a.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

Territorial sea (*continued*)

[*Agenda item 2*]

1. Mr. GALINDO POHL (El Salvador), speaking in connexion with the statement by the representative of Honduras at the preceding meeting concerning the Gulf of Fonseca, said that the effects of applying the concept of a 12-mile territorial sea and the rule of equidistance to determine the outer limits were not at all as the Honduran representative had described them. If the concept of a 12-mile territorial sea accepted by Honduras was applied, two of the three coastal States situated on the Gulf would completely close off the entrance to the Gulf; moreover, all the distances measured from Honduran territory to the line of entry to the Gulf exceeded the 12-mile limit of the territorial sea, whereas those from the land territory and islands of El Salvador fell within the radius of 12 nautical miles.

2. Since the Salvadorian islands of Conchaguita, Meanguera and Meanguerita were situated between Honduran *terra firma* and the entrance to the Gulf, he wondered whether Honduras was seeking to assert some claim over them. If that were the case, he must state categorically that El Salvador exercised sovereignty over those islands and was not prepared to accept any hypothesis that could affect its territorial integrity.

3. In conclusion, his delegation asked the Chairman whether it was in order to discuss bilateral issues in the Second Committee. As he saw it, the Committee was entrusted with the task of preparing general rules which would subsequently serve as the basis for settling specific cases.

4. The CHAIRMAN explained that, although the aim of the Third United Nations Conference on the Law of the Sea was to consider and adopt general rules, every delegation was free to refer to its own special geographical situation and also, where appropriate, exercise its right of reply in order to explain its position.

5. Mr. TUNCEL (Turkey), introducing the draft articles submitted by his delegation (A/CONF.62/C.2/L.8 and 9), said that, when considering criteria for measuring the breadth of the territorial sea, account must be taken of the seas with special geographical characteristics to which general rules could not be applied. That was why paragraph 2 of document A/CONF.62/C.2/L.8 made special provision for cases in which a coastal State's access to the high seas might otherwise be cut off. That provision was an exception to the rule for determining the breadth of the territorial sea and was intended to ensure that any new rules that were adopted would not give rise to conflicts or deprive coastal States of rights they had previously exercised.

6. Paragraph 3 of the same draft article referred to semi-enclosed seas having special geographical characteristics, such as the Caribbean, the Baltic, the ocean space around the Indo-China peninsula, the Mediterranean and others. His delegation believed that the best approach to that question—and one in keeping with the spirit of the Conference—was to make provision for negotiations between the States of the area concerned.

7. As far as the delimitation of the territorial sea was concerned, his delegation's proposal (A/CONF.62/C.2/L.9) referred to a situation in which the coasts of two or more States were adjacent and/or opposite to each other and was based on three principles. First, resort should be had to negotiations in order to determine boundary lines: such negotiations should be conducted equitably so as to enable the States concerned to reach conclusive agreements. Secondly, the proposal incorporated the notion that the median line, or the line of equidistance, was only one of several methods of delimiting the maritime boundaries between States, as had been recognized by the International Court of Justice in a decision concerning the North Sea;[1] his delegation stressed the fact that the median line was not always applicable, since special geographical circumstances, such as the special configuration of coasts and the existence of islands, must be taken into consideration. Thirdly, the existence of islands constituted one of the special cases. The presence of islands, islets and rocks would complicate the consideration of provisions, especially those referring to the continental shelf and the economic zone. The Conference must recognize that the existence of islands, islets and rocks conferred special geographical characteristics on the area in which they were situated.

8. Paragraph 3 of his delegation's proposal provided for peaceful means of resolving differences of the kind employed by the International Court of Justice in the North Sea case.

9. Mr. RABAZA VASQUEZ (Cuba) said that the Third Conference on the Law of the Sea was under an obligation to listen to the views of those States which had not participated in the work of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction and had consequently not stated their position on several of the questions and issues which the Conference had to consider.

10. The geographical situation of Cuba prevented it from having a wide territorial sea or a uniform economic zone, but his country had given full support to Peru and Ecuador, both of which countries advocated a zone under national sovereignty and jurisdiction extending for 200 nautical miles. With regard to the living resources of the area under national jurisdiction, his delegation believed that many coastal States would not be able fully to exploit the fish resources in their zone and should therefore allow other States to enter the area, on a non-discriminatory basis, under a concession or licence, with priority given to the developing countries, particularly those that were land-locked and geographically disadvantaged, and to States to whose economy fishing was absolutely essential.

11. In that connexion, he said that his country supported the idea of regional or subregional solutions, in accordance with the resolution concerning the law of the sea adopted by the Fourth Conference of Heads of State or Government of Non-Aligned Countries, held at Algiers from 5 to 9 September 1973.

12. Many Caribbean countries were geographically disadvantaged, and the Conference must recognize the need to reach agreements which would provide those States with preferential rights of access to living resources within the zones under national jurisdiction of States in the same region or subregion. The right of geographically disadvantaged States to fish in regions in which they had always fished should also be protected.

13. Cuba was very dependent on sea lanes and, in spite of the criminal blockade imposed on it, had overcome the crisis and now had a large modern merchant fleet.

14. His delegation supported the retention of the existing régime of straits used for international navigation; in other words, the convention to be elaborated by the Conference

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

should guarantee freedom of navigation through an overflight over such straits. Free and uninterrupted passage through such straits should be closely linked to guarantees for States bordering on those straits, preferably spelled out in the convention itself, that full account would be taken of their legitimate interests. Likewise, sea lanes could not be closed to free navigation where they were the natural and shortest means of access from the ports of a State to ocean space. Where necessary, the coastal States of such straits could, in co-operation with the competent international organizations, designate corridors or traffic separation lanes in order to reduce the risk of accident.

15. Mr. MOVCHAN (Union of Soviet Socialist Republics), referring to the draft articles proposed by Guyana and Spain (A/CONF.62/C.2/L.5 and 6), said that before those questions were discussed other questions should be considered, mainly those relating to the economic zone, just as the question of archipelagos must be discussed before that of archipelagic waters. The text submitted by Spain used various different concepts, such as sovereignty, jurisdiction and competence, indiscriminately, which could give rise to confusion.

16. Three general trends seemed to emerging from the deliberations of the Conference on the question of the territorial sea; first, a belt of territorial waters called the territorial sea should exist; secondly, the breadth of that territorial sea should not exceed 12 nautical miles; thirdly, the territorial sea and its resources should be under the sovereignty of the coastal State.

17. He reminded the Committee that only 30 working days remained for consideration of the issues referred to the Committee and that it should try to speed up its work.

18. That would enable the Second Committee to deal with the régime of transit. The proposals made by the sea-bed Committee, functioning as the preparatory committee for the Conference (A/9021 and Corr.1 and 3, vol. VI), were based on a complete examination of the proposals submitted up to then, particularly the one submitted by Fiji (*ibid.*, vol. III, sect. 31). All the proposals assumed that the traditional régime of innocent passage was applicable in the territorial sea; his delegation supported that view.

19. With a view to ensuring a rational reconciliation of all the interests involved and to avoid the possibility of different interpretations of the régime of innocent passage, the draft articles should clearly define the rights and obligations of coastal and non-coastal States, particularly in respect of innocent passage; that would certainly be a contribution to the development of international law. He hoped that the Second Committee would begin to deal as soon as possible with important matters such as innocent passage, guarantees for the rights of coastal States and the definition of their corresponding obligations, and the delimitation of the territorial sea, for there was enough documentation available to deal with those questions.

20. Mr. MANNER (Finland) said that in the debate so far, statements had been made in favour of the plurality of régimes with regard to the maritime zones subject to the jurisdiction of coastal States, besides the traditional notion of the territorial sea as approved in 1958 by the First United Nations Conference on the Law of the Sea in the Convention on the Territorial Sea and the Contiguous Zone.[2] His delegation based its position on the classic notion of the territorial sea according to which it was an integral part of the State's territory, and there did not seem to be any reason for changing the legal régime on which the rights and powers of a coastal State over the belt of sea adjacent to its coast were traditionally based. His delegation had some difficulty in understanding the reasons for basing the system of powers of the coastal State principally upon the concept of jurisdiction. His delegation did not consider sovereignty to be the most comprehensive form of jurisdiction; on the contrary, sovereignty embodied, among other things, jurisdiction which, as such or in the form of a "restricted sovereignty", could also refer to the continental shelf, the fishing zone, or the proposed new economic zone. The notion of a rising scale of competences did not underline with sufficient clarity the essential difference which traditionally existed between the legal status of the territorial sea and the adjacent maritime area, which was still part of the high seas. In that connexion, his delegation wished to point out the importance of preserving the function of the outer limit of the territorial sea as the actual boundary of the State with the high seas or with the territorial sea of a neighbouring State. Even if it was thought that the proposed economic zone should not be considered a part of the high seas because it was a zone in a class by itself, the nature and the status of the territorial sea should not be disturbed. Although it might be possible to list all the powers of the coastal State with respect to the maritime area closest to its coast, his delegation believed that the use of the traditional concepts of the territorial sea and sovereignty would continue to be the most precise way of defining the content and the nature of the theoretically unlimited powers of the coastal State over the maritime area in question. In conclusion, his delegation's attitude with respect to the different draft articles which had been presented to the Committee would be determined by its view that the fewer changes there were in the text approved in 1958 the better.

21. Mr. KHARAS (Pakistan) said that uncertainty about whether a general agreement could be reached on the question of the territorial sea was due to the existence of the differing concepts of the "territorialists" and the "patrimonialists". According to the former, a plurality of régimes could exist in the territorial sea and sovereignty, in its strict sense, would apply only to a part of the territorial sea. For the latter, there existed a single régime of indivisible and total sovereignty which would apply to the territorial sea with the sole exception of the right of innocent passage, and the zone in which the different régimes existed was called the patrimonial sea or the economic zone. Those two concepts differed more in form than in substance, since they led to similar practical results. Pakistan favoured the patrimonialist approach, and considered that the breadth of the territorial sea should be 12 nautical miles, and the economic zone should not exceed 200 nautical miles measured from the baselines used to measure the territorial sea. It preferred that those limits be universal, subject to their geographical viability. The limits of the territorial sea and the economic zone made up an indivisible unit; the 200-mile economic zone was the condition *sine qua non* of the 12-mile territorial sea.

22. His delegation considered the definition of innocent passage contained in the Geneva Convention of 1958 to be satisfactory, but welcomed the attempt of the United Kingdom to make it more precise. That would be especially useful in the case of straits which were part of the territorial sea and in the case of archipelagic waters. The provisions of articles 3 and 4 of the 1958 Geneva Convention relative to the determination of the baselines were imprecise and were a source of difficulties in practice; consequently it would seem necessary to limit the maximum length of strait baselines.

23. The United Kingdom proposal (A/CONF.62/C.2/L.3) was interesting, especially chapter II, which dealt with the territorial sea. Chapter III, on passage through straits used for international navigation, posed certain problems for a number of States.

24. Chapter II, article 17, of the United Kingdom proposal empowered the coastal States to suspend innocent passage to protect its security, but the suspension would take effect "only after having been given appropriate publicity". That provision did not take into account the possibility of an emergency situation which would make it difficult for the coastal State to fulfil the requirement of prior publicity before suspending innocent passage. His delegation did not consider that paragraph 5 of article 18 made sufficiently clear what authority would deter-

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

mine if a coastal State had behaved in a manner contrary to the provisions of the proposal and would decide on compensation for loss or damage. He wondered whether that would be determined by the courts of the coastal State, the courts of the flag-State, or by an international body. Article 22, relative to the criminal jurisdiction of the coastal State, provided that the coastal State would be empowered to arrest persons or to conduct investigations on board a foreign ship during its passage through the territorial sea if it was necessary for the repression of illicit traffic in narcotic drugs. His delegation considered those powers to be too wide and liable to abuse.

25. If more proposals continued to be made, there might be a repetition of what had occurred at the 1973 session of the sea-bed Committee, when that Committee had been submerged by too many proposals, many of which did not differ as to their substance. That consideration did not apply however to proposals not covered by the three main trends to which the Chairman had referred at the 2nd meeting, when the debate on the territorial sea had opened. His delegation considered that at that stage of the Committee's work, it would perhaps be useful to concentrate on consolidating the proposed texts into three or even two alternatives. It would also be valuable to convene meetings of the proponents of the main trends.

26. Mr. KAFANDO (Upper Volta) said that his delegation was prepared to support the idea of combining the economic zone with the territorial sea in a single national maritime zone, if that was simply a way of identifying it, since it would facilitate understanding of the nature and the juridical régime of the maritime areas in which the coastal State would exercise sovereignty. However, it would appear that, on the contrary, the formula was intended to lead to a debate on substance. If that was the case, it might involve certain risks with regard to the extension of the sovereignty of the coastal State, the juridical régime in the territorial sea and the zone identified with it, and the real purpose of the economic zone.

27. His delegation felt that to talk in terms of a national maritime zone would imply that the coastal State would exercise full sovereignty over that zone, one of the consequences of which would be that the land-locked countries would have access to the sea only at the discretion of the coastal State. That would mean a return to the formula proposed by some delegations of linking such access to bilateral agreements. His delegation did not favour such arrangements.

28. He inquired whether opting for the dual notion of a national and an international zone would mean that the coastal State would exercise sovereignty and jurisdiction in a straight line up to the limit of the 200 nautical miles that would become its territorial sea. That would constitute a further risk, since the new concept of an economic zone had been accepted and held to be legitimate primarily for economic reasons. As that had been done specifically to benefit the coastal States, the zone had been placed under their sovereignty. Accordingly, whatever the extent of their sovereignty might be, there should be a scale of regulations applying to it.

29. The corollary of the coastal State's full sovereignty in the proposed "national maritime zone" was that the access of the land-locked countries to the area regarded as the economic zone and their participation in the exploitation of its resources would no longer be a right, but subject to the good will of the coastal State.

30. His delegation was not opposed in principle to the introduction of new concepts, since the aim of the Conference was to produce a new law of the sea. The dual concept proposed contained some objective elements and was likely to receive the support of the majority of coastal States, but not without giving rise to a certain amount of concern in land-locked countries. If out-dated concepts needed to be abolished they could be replaced, for example, by the concept of a national maritime zone or the much more altruistic concept of a regional maritime zone. Such a formula would have the advantage of covering all those that benefited from the sea, that is to say, both the coastal States and the land-locked countries. He was not discussing semantics but expressing thoughts which he hoped would contribute to the various attempts at agreement in the Committee. As the representative of the Soviet Union had said, there appeared to be a tendency in the Committee to differentiate between the territorial sea and the economic zone; he agreed with the representative of Finland that it would be better not to change the nature and juridical régime of the territorial sea.

31. Mr. SANTISO GALVEZ (Guatemala) cited historical precedents to show his country's consistent position with regard to the principle of a 12-mile limit to the territorial sea, and he reminded the Committee that Guatemala had not ratified the Geneva Convention on the Territorial Sea and the Contiguous Zone because, under article 24 of that Convention, it would not be possible to extend the territorial sea beyond 12 miles, which was contrary to the progressive development of international law.

32. His country had therefore welcomed the proposal concerning the new concept of the patrimonial sea submitted by Colombia in 1972 to the preparatory committee for the Specialized Conference of the Caribbean Countries on Problems of the Sea, a proposal that had previously been submitted by Venezuela to the sea-bed Committee in Geneva in 1971. His country had also participated in the preparation of the Declaration of Santo Domingo[3] and he reaffirmed its full support for the principles of that Declaration.

33. As to the proposals that had so far been submitted at the Third Conference on the Law of the Sea, his delegation preferred the proposal submitted by the delegation of Guyana (A/CONF.62/C.2/L.5), but would like specific mention to be made of the concept of the sovereignty of the coastal State over the natural resources in a zone of up to 200 miles in breadth.

34. With reference to the question of the delimitation of the territorial sea when the coasts of two or more States were adjacent to it, his delegation felt sure that it could make equitable arrangements with its neighbour countries, which would protect the legitimate interests of all.

35. Finally, he wished to take the opportunity to repeat that the waters of the historic Bay of Amatique were internal waters, and had always been under the sovereignty of Guatemala.

36. Mr. MAAS GEESTERANUS (Netherlands), referring to the proposals made by the delegations of Guyana and Spain contained in documents A/CONF.62/C.2/L.5 and 6, said that his delegation was prepared to give due consideration to the idea of establishing some form of economic zone or patrimonial sea. He wished to concentrate his remarks on the proposal to include an introductory article covering both the territorial sea and the areas seaward of it. In the view of his delegation, that proposal might create more problems than it would solve, bearing in mind, firstly, that the use of the term "jurisdiction" might create confusion between the sovereignty of the coastal State over the territorial sea and the jurisdiction of the coastal State over zones beyond the territorial sea, since some writers confused the concepts of jurisdiction and sovereignty; secondly, even if another term was used, the proposed article seemed to suggest that the coastal State had no jurisdiction outside the outer limits of the zone, and had residual rights within such a zone.

37. Such a concept was both too generous and too restrictive to the coastal State; for example, it was too restrictive with regard to the right of hot pursuit, which was not limited to a distance of 200 nautical miles, or with regard to the continental shelf, since, should the Conference decide to maintain the ex-

[3] *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 21* and corrigendum, annex I, sect. 2.

isting limit of the continental shelf, the sovereign rights of the coastal States over the shelf would extend in some places to a sea-bed area beyond the 200-mile limit.

38. On the other hand, the proposed introductory article conceded too much in so far as it suggested that the coastal State would have residual rights in the zone beyond the territorial sea in the same way as it had in the territorial sea itself. Obviously, the coastal State had full sovereignty in the territorial sea, limited only by certain rules of international law. However, that principle did not apply to already existing zones beyond the territorial sea, such as the continental shelf or a fisheries zone or any new zone which might be created, whether an economic zone or a patrimonial sea or an intermediate zone.

39. For that reason he felt that it would be useful to define the rights and duties of coastal States in those zones beyond the territorial sea in such a way as to harmonize the interests of the coastal State, on the one hand, with those of all other States, considered individually or collectively, on the other: that was to say, from the point of view of the interests of flag-States or the interests of those who might be collectively represented by an international authority, a fisheries organization or an international authority for pollution control or even by a regional authority responsible for supervising an equitable distribution of the living and non-living resources in a regional economic zone.

40. His delegation considered that, in order to arrive at a workable balance between the three forms of jurisdiction—the jurisdiction of the coastal State, the jurisdiction of the flag-State and the jurisdiction of an international authority—and, at the same time, to maintain sufficient flexibility for future developments in the law of the sea, the rights and duties of each of the categories mentioned should be defined in a functional way without giving privileges to any category over and above the other two. Therefore, it was not possible to give the coastal State residual rights in the zones beyond the territorial sea as if those zones were a mere extension of the territorial sea itself.

41. For those reasons, his delegation would find it difficult, as a matter of principle, to accept the proposal for an introductory article which considered the territorial sea and any zone beyond it as a single whole.

42. Mr. TUPOU (Tonga) said that Tonga's claim to its territorial sea was based on the Royal Proclamation of 1887, which referred to four co-ordinates in the form of a rectangle covering a total area of sea and islands of approximately 150,000 square miles.

43. Tonga's claim had been set forth in various laws, the text of which, together with a copy of the Proclamation, had been forwarded to the Secretary-General of the United Nations and should later be published in a supplement to the legislative series.

44. The method of delineation on which Tonga's claim was based was not the same as that applied today; but that was how Tonga protected its territorial integrity and the unity of its 150 islands. Because Tonga consisted of a group of islands, his delegation would support the concept of the archipelagic State and archipelagic waters, which, as the representative of Indonesia had stated, connected rather than separated the various islands.

45. His delegation also gave its full support to the 200-mile economic zone or patrimonial sea, while noting at the same time the growing trend in favour of a 12-mile territorial sea.

46. His delegation in keeping with the spirit of accommodation which had so far prevailed at the Conference, was willing to review its claim so that the Conference might bring into being a convention accommodating not only the legitimate interests of Tonga but also the interests of the world community.

47. Mr. VALENCIA RODRIGUEZ (Ecuador) said that his delegation would prefer to retain the traditional term "territorial sea" to describe the adjacent maritime space over which a coastal State exercised its sovereignty, although some changes were needed to bring the relevant concept into line with present-day realities. To that end, his delegation had submitted two draft articles on the territorial sea, which read:

"*Article 1*

"1. The sovereignty of a coastal State extends beyond its coast and internal or archipelagic waters to an adjacent zone described as the territorial sea.

"2. Sovereignty extends also to the sea-bed and subsoil of the territorial sea, as well as the corresponding air space.

"3. Each State has the right to establish the breadth of its territorial sea up to a distance not exceeding 200 nautical miles, measured from the applicable baselines.

"*Article 2*

"The coastal State exercises its sovereignty over the territorial sea subject to the provisions of this Convention."[4]

48. The proposal defined the territorial sea as a zone adjacent to the land territory of a coastal State which extended beyond its coastline and archipelagic or internal waters, over which it exercised its sovereignty. That definition was similar to the one in the Geneva Convention and was consistent with other proposals already before the Committee. The draft articles also stated that the sovereignty of a coastal State extended to the sea-bed and subsoil of the territorial sea, and to the air space above it.

49. His delegation considered that, if it was stated that the State exercised sovereignty over the adjacent maritime space, it was unnecessary to indicate that the coastal State exercised sovereignty over the waters of the territorial sea or the resources contained therein. It also felt that it was better to refer to maritime space rather than to rights over a specific part of such space. Consequently, the general concept was spelled out sufficiently clearly in the first two paragraphs of the draft article, and the problem of ascertaining to whom exercise of residual sovereignty in the territorial sea belonged would be resolved in favour of the coastal State.

50. The principle established in paragraph 3 was an essential element of the Ecuadorian proposal. His country's position was based on the legal norms set forth in various declarations, such as the Santiago Declaration of 1952 and the Declarations of Montevideo[5] and Lima[6] of 1970. His delegation considered reasonable a maximum limit of 200 miles, especially for States having a wide or open sea, but that did not mean that it was in favour of a 200-mile territorial sea for all States. What Ecuador was proposing was that the coastal State should extend its territorial sea to the limit previously indicated. Consequently, in view of the diverse circumstances of coastal States, the most appropriate solution appeared to be a regional or subregional arrangement that took account of the variables referred to in the resolution on the competence of States to determine their territorial sea, adopted at the Third Meeting of the Inter-American Council of Jurists, held at Mexico City in 1956. It should also be borne in mind that no international rule yet existed for determining the breadth of the territorial sea.

51. The economic reasons backed by military requirements, which justified the extension of the territorial sea to a distance not exceeding 200 nautical miles had already been set forth by various delegations, including his own, at the 31st plenary meeting, and that of Madagascar at the preceding meeting of the Second Committee. It was important to point out that the proposal of Ecuador did not refer to the traditional notion of sovereignty, but to a new notion, which would be subject to the norms of the convention which the Conference would approve. Furthermore, his delegation considered that it was unnecessary

[4] Subsequently circulated as document A/CONF.62/C.2/L.10.

[5] Document A/AC.138/34 of 30 April 1971.

[6] Document A/AC.138/28 of 14 August 1970.

to state in its proposal that the exercise of sovereignty should be subject to the norms of international law, since that might give rise to all kinds of disputes.

52. In brief, Ecuador was proposing a territorial sea of 200 miles, where the coastal State would exercise its sovereignty over all the geographical space contained therein. That was a new concept, and his delegation intended to present at a later date a draft of complementary norms on the co-existence of different régimes for international navigation within the territorial sea of 200 miles.

53. Finally, he expressed his delegation's disagreement with the view expressed by the representative of the Soviet Union earlier in the meeting to the effect that it was already possible to identify the main trend that was emerging in connexion with the territorial sea, particularly with regard to the establishment of its breadth at 12 miles, because a particular trend had emerged, favouring the establishment of a 200-mile territorial sea.

54. Mr. HERRERA CACERES (Honduras), speaking in exercise of the right of reply, said that his delegation had been conforming to the wish of the Conference in referring to specific situations in its general statement at the preceding meeting. The matter of the Gulf of Fonseca illustrated a common situation in the law of the sea, and it was therefore appropriate to make reference to it in connexion with the régime of internal seas, the territorial sea, baselines, and historic bays, and in order to determine its status vis-á-vis the international community and not as a function of the internal régime of the Gulf, as the representative of El Salvador had done at the beginning of the meeting, when he had attempted to deny the sovereignty of Honduras over its islands and waters. Honduras maintained that the waters of the bay possessed the status of internal waters and, as a consequence, it was logical that the baseline of the territorial sea should be that line which united the natural geographical points of the bay. He agreed with the representative of El Salvador that a dispute existed regarding the territorial and maritime boundaries between Honduras and El Salvador; Honduras, for its part, had always manifested its willingness to settle those boundaries as soon as possible.

55. Mr. GALINDO POHL (El Salvador), speaking in exercise of the right of reply, stressed that the Conference was not an appropriate forum for airing bilateral disputes, and maintained that referring to particular cases to support general ideas was different from formulating positions which encroached upon the established rights of other States. That was what the representative of Honduras had done when he had referred at the previous meeting to the delineation of waters between adjacent States and, at the current meeting, to historic bays, and he cited in that connexion a judgement of the Central American Court of Justice of 1917.[7] On whatever theory the delineation of either the territorial or internal waters was based, Honduras would be deprived of access to the line of entry to the Gulf. What was more, the Honduran representative had even referred to problems of territorial and maritime boundaries, which would only raise further problems. If the Committee agreed, El Salvador intended to pursue the controversy.

56. The CHAIRMAN appealed to all delegations to refrain from referring to bilateral questions. It was not easy for the Chairman to recognize all disputed questions at the moment when they were introduced, and that was why the right of reply was provided for. He would limit himself to asking delegations to refrain from references to bilateral questions which, furthermore, could not be settled in that forum.

The meeting rose at 1.20 p.m.

[7] See *American Journal of International Law*, vol. II, 1917 (New York, Oxford University Press), p. 674.

5th meeting

Tuesday, 16 July 1974, at 3.40 p.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

Territorial sea (*continued*)

[*Agenda item 2*]

1. Mr. CALERO RODRIGUES (Brazil) said that the drafts before the Committee, which provided that the sovereignty of the coastal State gave it jurisdiction over a belt of sea adjacent to its land territory, were only restating existing international law. Another principle of international law was that the breadth of the territorial sea was established by the coastal State itself. There was no rule of customary or conventional international law which established either the breadth of the territorial sea or a limit beyond which States could not establish for themselves the breadth of that sea. When the old customary limit of 3 miles had become obsolete and wider limits had become customary, three international conferences had been unsuccessful in establishing new limits.

2. When several countries, including his own, had established a 200-mile limit for their territorial sea, they had taken into account three legal considerations: first, a territorial sea was recognized by international law; secondly, international law empowered the coastal State itself to establish the breadth of its territorial sea; thirdly, international law did not set a maximum limit for the breadth of the territorial sea. The 200-mile limit had therefore been established within the framework of existing international law. The extensions had been made with a view to giving effect to the Declaration of Lima adopted in 1970,[1] which recognized, *inter alia*, the inherent right of the coastal State to "explore, conserve and exploit the natural resources of the sea adjacent to its coasts and the soil and subsoil thereof, likewise of the continental shelf and its subsoil, in order to promote the maximum development of its economy and to raise the level of living of its people". Neither the Declaration of Lima nor the Declaration of Montevideo of 1970[2] laid down a 200-mile limit as a general criterion. Both stated that the limits must be set in accordance with the geographical, geological and biological conditions of the area and the need for a rational utilization of its resources.

3. The "legitimate priority" of the interests of the coastal States mentioned in the Declaration of Montevideo was now universally recognized. Few delegations, if any, would deny the need to spell out in the convention the Conference was to adopt the rights of the coastal State over an adjacent sea-belt up to 200 miles in breadth.

4. Some delegations held the view that a 12-mile limit and the traditional régime should be accepted. In that belt of sea the coastal State was sovereign and it had only to allow innocent passage of foreign ships. For the zone beyond the 12-mile limit, there were various schools of thought. In the view of some delegations, the coastal State would have sovereign rights with

[1] Document A/AC.138/28 of 14 August 1970.
[2] Document A/AC.138/34 of 30 April 1971.