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Summary records of meetings of the Second Committee
6th meeting

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submitted to the sea-bed Committee, he was afraid that the discussion might merely duplicate that in the various sessions of that Committee unless a different approach was adopted.

59. From the discussion so far, he had identified three schools of thought, namely, those in favour of a territorial sea not exceeding 12 miles, those in favour of a narrow territorial sea linked to an economic zone not exceeding 200 miles in breadth, and those in favour of an extended territorial sea which would include that economic zone. The four main subjects under discussion were the right of innocent passage, the territorial waters of archipelagic States, full sovereignty for the coastal State over a limited zone and jurisdiction over a wider zone, and delimitation. It might be possible to begin by adopting a general text which reflected the basic ideas of each school of thought on each subject. Then the proponents of each school of thought could meet, if possible under the chairmanship of one of the Vice-Chairmen, to submit amendments to the basic text and try to reach agreement on a text acceptable to all. The Chairman would then reconcile the three points of view and produce a single text which would be the basis for drafting articles of the future convention related to the territorial sea.

60. The CHAIRMAN said that those suggestions were very similar to the one he intended to make to the officers of the Committee.

The meeting rose at 6.15 p.m.

6th meeting

Wednesday, 17 July 1974, at 11 a.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

Organization of work

1. The CHAIRMAN said that the officers had made a series of recommendations designed to facilitate the work of the Committee. First, participation in the debate should be limited to delegations of countries that 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 or delegations that had new proposals to make. Naturally, delegations that had comments on those proposals would be entitled to speak.

2. Mr. ANDERSEN (Iceland) supported the proposal of the officers and said that he would not take part in the debate.

3. Mr. MAHMOOD (Pakistan) asked whether comments could be made on the proposals already formulated.

4. The CHAIRMAN, after replying in the negative to the representative of Pakistan, said that the officers had considered the possibility of limiting the time for statements and had decided, secondly, that it was preferable to continue relying on the self-discipline of representatives and to fix 10 minutes as a point of reference. Thirdly, the officers appealed to representatives to refrain from repeating proposals they had already submitted. Fourthly, the officers felt that sufficient time had been allocated to consideration of the question of the territorial sea and proposed that the list of speakers be closed and that the Committee should move on to the stage of reconciliation of positions in informal meetings.

5. Mr. THEODOROPOULOS (Greece) asked whether representatives could submit texts or amendments at the informal meetings.

6. The CHAIRMAN replied that the aim of the informal meetings was to consider general formulas and that it would not be appropriate to submit specific proposals. If there were no objections, he would take it that the Committee agreed with the recommendations of the officers.

It was so decided.

Territorial sea (*continued*)

[*Agenda item 2*]

7. Mr. DJALAL (Indonesia) said that the nature of the rights of the coastal States over the territorial sea could be summed up by the word "sovereignty". Sovereignty meant jurisdiction and the exercise of all rights and other powers over that space, subject to the limitation inherent in the right of innocent passage for foreign vessels. His delegation believed that the sovereign rights of the coastal State extended to the air space, the water column, the sea-bed and the resources of the territorial sea. The latter should be measured from the baselines, which could be the low-water mark along the coasts, or straight lines in the case of coasts with deep indentations or in front of which there were strings of islands, or in the case of archipelagic States. For that purpose, it was of fundamental importance that the concept of "archipelagic waters" should be taken into account in determining the nature and characteristics of the territorial sea, and his delegation agreed with the formula whereby the sovereignty of the coastal State would extend beyond its land area and internal waters and, in the case of archipelagic States, its archipelagic waters, to a belt of sea adjacent to its coasts called the territorial sea. In any event, in determining the sovereignty of the coastal States, reference to the States or the archipelagic waters could not be omitted and, in the view of his delegation, the territorial sea should be measured from the archipelagic waters and not from the coast or internal waters. For that reason his delegation could not accept the relevant text proposed by the United Kingdom delegation (A/CONF.62/C.2/L.3). It should be added that chapter II, part I of the United Kingdom draft, which referred to the nature and characteristics of the territorial sea, was similar to articles 1 and 2 of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone,[1] which had not been ratified by Indonesia.

8. Finally, his delegation would have no difficulty in accepting the 12-mile limit for the territorial sea on the condition that, in the case of Indonesia, it would be determined from the baselines applicable to archipelagic States.

9. Mr. SCERNI (Italy) said that his delegation found the definition of the territorial sea in the United Kingdom draft satisfactory. Furthermore, he agreed in principle with the conclusions set out at the 4th meeting by the representative of the Soviet Union with respect to the three points which could already be identified in order to pass on to the other items on the very heavy agenda. The territorial sea should be regarded as an area fully within the sovereignty of the coastal State and the external limit, which, in his opinion, could be fixed at 12 miles, should be regarded as a kind of border of the State, as the representative of Finland had said at the same meeting. Beyond that border, a sea space might be established in which the coastal State would not exercise exclusive sovereign juris-

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

diction, but would have certain powers or jurisdictions vested in it in view of its economic needs in respect of resources or other exigencies such as anti-pollution measures. That was a new formula and a break with tradition.

10. Mr. TUNCEL (Turkey) said that it was not accurate to state that the limit of 12 nautical miles had almost been accepted as a general and uniform rule. His delegation believed that all the proposals in that connexion provided for a maximum limit of 12 nautical miles, within which the States would be competent to establish the limit which they deemed appropriate. It was in that context that his delegation proposed that such powers should be exercised, in the case of special sea areas, with due regard to geographical circumstances and in conjunction with all the States of the area. The delegation which had requested the approval of the 12-nautical-mile rule had, at the First United Nations Conference on the Law of the Sea, held at Geneva in 1958, submitted a draft for the approval of a limit of 3 nautical miles and, afterwards, had stated in the sea-bed Committee that its country did not propose to widen its territorial sea to more than 6 nautical miles but would not object to a maximum limit of 12 miles. That delegation now proposed a limit of 12 miles, not as a maximum limit but rather as a general and uniform rule.

11. His delegation had supported the principle of agreement as a rule; that was not original but merely stipulated what already existed in an incomplete form. Special circumstances had a role, though not a major one, to play, although it was at least more important than that of equidistance in delimitation, according to article 12 of the 1958 Geneva Convention. It was only because of an absence of agreement and as a consequence of the non-application of special circumstances that the concept of equidistance appeared in the Geneva Convention to be the third and final method of delimitation. His delegation agreed with those who believed that the scope and meaning of the concept of special circumstances could give rise to controversy. It was precisely for that reason that his delegation had tried to contribute to the work of the Conference by attempting to explain that concept, basing itself on the example of the practice of States, the work of the International Law Commission, the debates of the 1958 Conference and on the analyses of the International Court of Justice. The draft submitted by Turkey (A/CONF.62/C.2/L.9) mentioned neither the median line nor equidistance, although it was not opposed to the adoption of either of those methods of demarcation if appropriate. The guideline it used was the opinion of the International Court of Justice, which had stated in paragraph 101 of its judgment on the North Sea continental shelf[2] that its application was not obligatory. It was possible that they were effective as demarcation procedures but, in any event, their application should be decided directly by the States concerned. For that reason, his delegation proposed that the selection of the appropriate procedure should be decided on by the States concerned.

12. One representative had affirmed that the "equitable principles", which constituted a fundamental element in the proposal by Turkey, were a vague and arbitrary concept, an assertion with which the Turkish delegation was far from agreeing. The principle of equity was a criterion used not only by the International Court of Justice, but also by other international tribunals, which had applied it in judicial and arbitration decisions.

13. No delegation had expressed opposition to the principle of the "indivisibility of territorial sovereignty", mentioned in the debate, to which his delegation strongly adhered. Like continental territory, islands formed an indivisible part of the territory of a State, which also exercised its sovereignty in such cases. In that context, sovereignty extended to the sea spaces, such as the territorial sea, the continental shelf and the economic zone. The point was to determine the demarcation lines of the sea spaces in which the State would exercise its right of sovereignty. The preliminary article of the convention or conventions to be drafted would include primarily provisions to the effect that State sovereignty would be exercised in accordance with the provisions of the convention. His delegation had urged that the delimitation provisions should be among the fundamental provisions of the convention or conventions to be adopted.

14. Mr. MBAYA (United Republic of Cameroon) noted that the supporters of the argument for territorialism held that it was superior to patrimonialism because it solved the question of residual competences, and he wondered if that objection was pertinent, since the patrimonialist theory was sufficiently clear in affirming that, apart from the problem of freedom of navigation, all other powers rested with the coastal State. The enumeration of the spheres outside the competence of the coastal State was restrictive both in the territorial sea and in the patrimonial zone. With respect to the new concept of the "right of hot pursuit" over resources or activities originating in the national maritime zone, introduced by the representative of Madagascar in his statement before the Committee at the 3rd meeting, he had doubts regarding its precise scope and content.

Mr. Njenga (Kenya), Vice-Chairman, took the Chair.

15. Mr. PARSI (Iran) said that, although the issues before the Conference were much more complex than those raised at Geneva in 1958 and 1960, many of them had been dealt with by past conferences, but had remained unresolved. One of them was the nature and extent of the sovereignty or jurisdictions of the coastal State over the adjacent sea. At the 2nd meeting of the Committee, the Chairman had summed up the prevailing trends, and the draft articles submitted to the Committee represented the same trends. It was not difficult to follow the conceptual differences between the positions which those documents represented, but it was difficult to understand the content of the terms sovereignty, jurisdiction and competence as used in the texts. It would therefore be helpful if an attempt was made to define them in a draft article. His delegation thought that the divergence of opinions derived primarily from the conflict between two basic principles: the principle of territorial sovereignty over the adjacent sea and that of the freedom of the high seas. However, in the existing circumstance it was hard to conceive of an absolute sovereignty over the adjacent sea or of an absolute freedom of the high seas. The two principles should be limited by the need for international co-operation. What was needed was a balance between the legitimate interests of the coastal State and those of the international community. Such a balance might be achieved by considering the adjacent sea from two points of view. First, it should be considered as a means of communication in which the freedom of international navigation, commerce and transport must be maintained. Secondly, it should be regarded as a vital element for the life of a coastal people, whose economic, ecological and security interests should be safeguarded. It was the latter consideration which had led to the recognition of the jurisdiction of the coastal State over the sea adjacent to its coasts.

16. Given the divergence of interests and the variety of the geographical positions of States, it seemed neither possible nor feasible to adopt a set of uniform rules applicable to every area and every geographical situation, with a view to achieving unanimity in its approval and uniform application. The geographical characteristics of some special areas would have to be taken into account in determining the scope and extent of the coastal State's jurisdiction. Enclosed or semi-enclosed seas presented more acute problems which could not be solved by global norms applicable to all oceans; regional or bilateral arrangements seemed more appropriate in many areas, particularly in matters relating to the delimitation of areas under national jurisdiction. He noted that various bodies had recog-

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

nized the importance of the question of semi-enclosed seas and had paid great attention to it. The problems of enclosed or semi-enclosed seas had been referred to by the representatives of Finland, Libya, Kuwait, Iraq, Trinidad and Tobago, Yemen, Bulgaria and Thailand. The expression "semi-enclosed" could be used in a strict and a broad sense; in a strict sense it might be used in reference to a small body of water, an arm of the open seas, engulfed by the land territories of two or more States; such bodies of water usually had only one or two narrow outlets to the open seas. The entire sea-bed of an enclosed or semi-enclosed sea was usually a single continental shelf—a flooded part of the continent. In a broad sense, however, the term "enclosed or semi-enclosed sea" might be used in reference to a large body of water encircled by the land territories—continental or insular—of several States with one or more outlets to the open seas. However, all the bodies of water that it designated had certain features in common: they formed an intrinsic geophysical and ecological entity and were vulnerable to pollution and over-fishing. The demarcation of national jurisdictions had created special problems in certain cases which could only be solved by agreement among the parties concerned. His delegation drew the Committee's attention to the problems connected with semi-enclosed seas and hoped that the Conference would be able to adopt appropriate rules in respect thereof.

17. Mr. OLSZOWKA (Poland) said that, although the problems of the nature and characteristics of the territorial sea were less controversial than some other problems before the Conference, it was necessary to decide what aspects of the régime of the territorial sea were well defined and had been settled by existing legal rules; the Committee should then identify the elements which needed further clarification or reaffimation, as in the case of innocent passage.

18. The problem of the legal status of the territorial sea belonged to the first group of questions, since it was a generally recognized principle that all coastal States exercised sovereignty over a belt of sea adjacent to their coasts and that the sovereignty extended also to the air space and to the sea-bed and its subsoil, and was subject only to the right of innocent passage. In that connexion, he stressed the fact that that clear concept of the territorial sea should not be confused with the emerging concept of the economic zone. Thus, his delegation supported the proposals submitted by the United Kingdom and India (A/CONF.62/C.2/L.3 and 4), which were correctly based on a distinction between the two concepts and which, in regard to the territorial sea, followed the formulation of the Geneva Convention. He considered innocent passage to be one of the problems that needed to be further clarified and worked out in greater detail.

19. Another pressing issue for which a definitive solution had to be found was that of the breadth of the territorial sea; Poland, situated on the semi-enclosed Baltic Sea, still had a 3-mile belt of territorial sea, but it had recognized a breadth of 12 miles as an admissible maximum for the territorial seas of other States and had advocated such a solution at the Geneva Conferences. A maximum breadth of 12 miles, which represented a fair balance between the interests of coastal States and those of the international community, was the only one which, in his delegation's view, had a chance of being universally accepted by the Third Conference; in the previous few years many developing countries had issued laws and regulations which set the extent of the territorial sea within the limit of 12 miles.

20. At the same time, his delegation agreed with the proposals that recognized the special rights of coastal States beyond the limit of 12 miles for the purposes of exploitation and conservation of marine resources, provided that the distinction between the territorial sea and the economic zone was clearly established.

21. In conclusion, he expressed the hope that by reaching an agreement on the breadth of the territorial sea, the Committee would open the way to the solution of other problems of the law of the sea.

22. Mr. DIALLO (Guinea) said that the most important problem the Conference would consider was that of delimiting the territorial sea, since the security and economies of the coastal States would depend on its solution.

23. Many proposals had been submitted, which reflected two clearly defined trends: one advocated a reduced jurisdiction of up to 12 nautical miles, while the other advocated a reasonable zone not exceeding 200 miles. It must be noted that, in both cases, the freedoms of navigation, scientific research and the laying of cables and pipelines were safeguarded.

24. However, the big Powers wished to reduce the territorial sea to a maximum of 12 miles and were opposed to each State's declaring a territorial zone of a maximum breadth of 200 miles in the light of the configuration of its coasts and geographical and security considerations. In view of technological progress and the arms race, it was easy to understand the insecurity which might be felt by a developing coastal State whose sovereignty over the sea had been limited to 12 miles. On the other hand, the big Powers, instead of going ahead with the transfer of their technology, demanded that an economic zone should be established in which their right to explore and exploit the resources of the sea would be maintained.

25. Accordingly, his delegation supported the proposal of Ecuador (A/CONF.62/C.2/L.10), which was designed to protect justice and peace, and repeated that it would not reduce its existing maritime zone of 130 miles in breadth, which, moreover, did not even cover its continental shelf; nor was it prepared to subscribe to any convention under which it might be compelled to reduce the breadth of that zone.

26. Mr. SAPOZHNIKOV (Ukrainian Soviet Socialist Republic) said that the most complicated questions of the law of the sea were perhaps those connected with the definition of the outer limits of the territorial sea, the legal régime for straits used for international navigation, and the economic zone.

27. With regard to territorial waters, a very sound basis for an acceptable solution was to be found in the many existing texts, which were not only part of customary international law but had also been incorporated in the Geneva Convention on the Territorial Sea and the Contiguous Zone. That Convention constituted the legal order applicable in the matter, although its rules should be brought up to date and the gap due to the failure to find a solution to the problem of the outer limit of territorial waters must be filled.

28. He noted that various formulations concerning the territorial sea had been put forward; to his mind, there was no real difference of opinion, at least with regard to a basic principle, namely, that the territorial sea was subject to the sovereignty of the coastal State, a sovereignty which also extended to the sea-bed and its subsoil, including the resources situated therein. However, some delegations had put forward new ideas and were using a new terminology: for example, the theory of the jurisdiction of the coastal State over the maritime space. His delegation thought that the concept of sovereignty recognized in international law should not be replaced by other vague concepts such as jurisdiction or competence and that, with a view to bringing its work to a happy conclusion, the Conference should confine itself to the terminology used in the list of items prepared by the sea-bed Committee (see A/CONF.62/29).

29. With regard to the innocent passage of foreign vessels through territorial waters, his delegation thought that the provisions of the Geneva Convention were fully in force, but that the concept of innocent passage must be defined more precisely; in particular, acts which would be incompatible with it must be specified. It was likewise necessary to clarify the ques-

tion of conformity with the laws and regulations established by the coastal State with regard to innocent passage.

30. The overwhelming majority of delegations which had spoken in the debate had declared themselves in favour of the 12-mile limit for territorial waters. The economic interests of the coastal States would be covered by the concept of the economic zone, which could extend up to 200 miles; however, the interests of international navigation with regard to passage through straits connecting parts of the high seas must not be forgotten. In conclusion, his delegation stressed that the important thing was to agree on solutions which were generally acceptable.

31. Mr. GODOY (Paraguay) said that his delegation was greatly concerned about the great lack of uniformity in interpreting the terminology of the law of the sea. He was not seeking to impose rigid limits on the devising of new terms, but emphasized the need for uniformity, not in the terminology itself, but in the meaning of the various terms, such as "territorial sea", "sovereignty", "jurisdiction" and "competence". It was essential for delegations to agree on the appropriate interpretation of those and other accepted legal terms.

32. A further matter of concern to his delegation was the inordinate number of claims to territorial seas of 200 miles, over which absolute sovereignty would be exercised, including air space, the sea-bed and its subsoil.

33. Not even the advocates of that extreme doctrine, however, were agreed on the nature and legal status of the so-called territorial sea. Such a wide range of interpretations reflected the system of the plurality of régimes for the territorial sea and was contrary to the general trend towards the codification and adoption of uniform rules on a world-wide scale. Undoubtedly every coastal State was in its own particular and distinct situation, but to concede that that fact entitled a State to determine arbitrarily the breadth of its territorial sea and its economic zone would create permanent instability and a proliferation of legal conflicts among States.

34. In conclusion, he repeated that his delegation fully recognized the rights claimed by coastal States to more extensive areas of the territorial sea and of the economic zone, but such recognition was in turn subject to acknowledgement by those States of the fact that land-locked developing countries had equal rights within the said regional economic zones for the peaceful exploration and exploitation of the living and non-living resources of the sea, the sea-bed and its subsoil.

35. Mr. FALCON BRICEÑO (Venezuela) said that he was concerned at the slowness of the headway being made at the current Conference. If it was not possible at the Conference to adopt a convention on the law of the sea, at least the basic provisions of the convention should be adopted. There could be no doubt that on the subject of the territorial sea some common ground existed among the great majority of States. There were of course difficulties, because a complex political enterprise was involved. Of necessity negotiation called for an over-all approach and did not lend itself readily to partial solutions. What was being sought was a global solution, and to achieve that it was sometimes very difficult to define partial aspects.

36. His delegation believed, with regard to the legal definition and status of the territorial sea, that the differences could be overcome. His country had repeatedly expressed the view that the substance of the question was that the maximum extension of the territorial sea up to a limit of 12 miles was conditional on the existence of a patrimonial sea of up to 200 miles. It had proposed that in the sea-bed Committee at its meetings in Geneva in 1971, after assuring itself of the viability of such a doctrine and of its appropriateness as a basis for formulating the new law of the sea. His delegation found that, basically, it coincided with the doctrine of the exclusive economic zone, formulated almost at the same time by the Asian and African States and already shared by the majority of States participating in the Conference.

37. His delegation agreed with those who asserted that negotiation was the most appropriate formula for reaching agreement on the difficult problems raised by the application of the law of the sea. Negotiation between States enabled them to review the historical development of their differences and to tackle questions of such importance directly in order to solve them in accordance with their respective interests and on a basis of equity.

38. Mr. ARAIM (Iraq) said he shared the opinions expressed in the Committee regarding the difficulty of including archipelagos and the economic zone in discussions on the territorial sea. The two proposals submitted by the representative of Turkey (A/CONF.62/C.2/L.8 and 9) might provide a good basis for discussion. Both proposals took into account the special circumstances of certain areas of the world, such as semi-enclosed seas. The principles of equity and justice should form the basis for agreement between the States concerned. In cases where the territorial seas of opposite or adjacent States overlapped, he thought the proposed convention should specify the methods whereby the States concerned could delimit their territorial sea. Such methods would be based on agreement between the States concerned and would take into consideration the special circumstances as well as the characteristics of the area. The configuration of the coast and all other geomorphological factors constituted the special circumstances. He suggested that the proposed convention should include specific methods which the parties would use in settling disputes that could emerge in the process of delimiting the territorial sea. He referred to Article 33 of the United Nations Charter and said that the parties could utilize the methods specified in that Article to settle disputes regarding the delimitation of the territorial sea. The position had not been made clear in the 1958 Geneva Convention, but it was of great importance in helping to avoid misunderstandings and disputes. His delegation held that the limits of the territorial sea should not exceed 12 nautical miles measured from the low-water mark following the sinuosities of the coast; it thought that the Turkish proposal safeguarded the interests of all States in certain areas, while accommodating different interests and promoting harmony and co-operation among all States in such areas.

39. His delegation had reservations regarding parts of chapter III of the United Kingdom proposal (A/CONF.62/C.2/L.3), on passage through straits used for international navigation. It supported freedom of navigation in the straits which connected two parts of the high seas. It hoped that the delegation of the United Kingdom would consider the proposal submitted by the delegation of Turkey, in order to take account of the delimitation of the territorial sea in some areas with special characteristics. The concept of innocent passage through the territorial sea, as outlined in the United Kingdom proposal, could provide a satisfactory basis for discussion. He also thought chapter II, article 21, paragraph 1, and article 22 of the United Kingdom draft of particular value as they were based on the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone.

The meeting rose at 1 p.m.