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37th meeting

Monday, 12 August 1974, at 3.20 p.m.

Chairman: Mr. Andrés AGUILAR (Venezuela).

Archipelagos (*concluded*)

[*Agenda item 16*]

1. Mr. LIMPO SERRA (Portugal) hoped that the Conference would solve the problem of archipelagos in a satisfactory manner and that the new convention would guarantee the rights of countries to benefit from the economic resources of the sea which were their natural heritage.

2. Since the 1958 Geneva Conference on the Law of the Sea, efforts had been made to provide a suitable legal régime for archipelagos. In a preparatory document prepared for that Conference, outlying archipelagos were defined as "groups of islands situated out in the ocean at such a distance from the coasts of firm land as to be considered as an independent whole rather than forming part of or the outer coastline of the mainland". The document concluded that "the only natural and practical solution is to treat such outlying archipelagos as a whole for the delimitation of territorial waters by drawing straight baselines from the outermost points of the archipelago—that is from the outermost points of the constituent islands, islets and rocks".[1]

3. That Conference had not resolved the problem of archipelagos but the Convention on the Territorial Sea and the Contiguous Zone[2] contained provisions enabling States to use the method of drawing straight baselines where there was a fringe of islands along its coast.

4. The unique character of archipelagos justified the use of the method of drawing one straight baseline connecting the outermost points of the outermost islands of an archipelago on the lines of the provisions of article 4 of the Convention. Waters thus enclosed should be regarded as internal waters, and the same baselines would be used for measuring the breadth of the territorial sea and other zones of national jurisdiction.

5. Proposals concerning archipelagos submitted to the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction had been limited to the specific case of archipelagic States. However, the arguments in favour of the establishment of a special régime for archipelagic States were also valid for archipelagos forming part of the territory of a coastal State, particularly with regard to the security and economic interests of such States. Application of a different régime to the latter would mean that the archipelagic part of the territory of mixed States would be regarded as second class territory. His delegation regarded the draft articles concerning archipelagic States and archipelagos forming part of the territory of a coastal State in document A/CONF.62/L.4 as more complete and balanced. Indeed, the entire document was an excellent working paper.

6. The provisions concerning revaluation and more equitable distribution of the resources of the sea under the revised law of the sea being prepared by the Conference should not impede navigation. The right of States to adopt a special régime for the delimitation of archipelagic waters should be recognized but his delegation would not favour any alteration of the existing régime of navigation.

7. U KYAW MIN (Burma) said that archipelagic States, though few in number, had special needs and interests which in the past had been subordinated to those of the major maritime powers. Those requirements could not be adequately met by general rules applicable to other States, whether insular or continental. As long as its islands and peoples were separated by waters that were subject to the régime of the high seas, the archipelagic State could not safeguard the integrity of its territory, the political, social and cultural unity of its people, the cohesion of its economy, and the needs of its national security. Determined as it was to safeguard its own territorial integrity and national unity, Burma fully supported the archipelagic State concept under which the interjacent waters enclosed within straight baselines connecting the outermost points of the outermost islands and drying reefs off an archipelago would be designated as archipelagic waters and, together with their seabed and superjacent air space, would be subject to the sovereignty of the archipelagic State, without affecting the interests of international commercial navigation therein. That support was accorded on the explicit understanding that the concept of the archipelagic State would be applicable only to mid-ocean archipelagos constituting a State. His delegation strongly opposed any extension of that concept to oceanic archipelagos or other groups or chains of islands belonging to a continental State. The considerations which justified a special régime for archipelagic States could not be invoked with respect to islands which did not constitute a State and which possessed none of the attributes of a State. In some cases, the constitutional status of such islands under the laws of the parent State was inferior to that of the principal political divisions constituting its mainland territory. International law should not therefore put them on the same level as archipelagic States. There was no reason why islands of that category should be excluded from the general régime of islands. In that connexion, his delegation welcomed the improved definition of an archipelagic State given in article 1 of document A/CONF.62/C.2/L.49.

8. The existing régime relating to deeply indented coastlines and waters enclosed by a fringe of islands along the coast had long been established in law and usage. That régime should not be affected by new provisions regarding archipelagic States, which had a direct bearing on territorial sea baselines and the status of waters landward of those baselines. The status of archipelagic waters was different from that of internal waters. At the previous meeting, the sponsors of the draft articles in document A/CONF.62/C.2/L.49 had indicated that they might eventually agree to the inclusion of a stipulation on the maximum permissible length of straight baselines in the provisions regarding archipelagic States. In such circumstances, his delegation considered it imperative that a disclaimer clause on the lines of article 8 of document A/CONF.62/L.4 should be incorporated into those draft articles.

9. Mr. BARABOLYA (Union of Soviet Socialist Republics) said that the question of the legal régime of the waters of archipelagic States, States constituted wholly by one or more archipelagos, was an entirely new problem in international law. There were no special norms in contemporary international law to provide the basis for consideration of that question. All the Committee had before it was proposals from archipelagic and some other States. That question was, however, closely related to other more important questions being considered by the Conference, such as the breadth of the territorial sea and the régime of international straits and economic zones.

10. The basic principles of contemporary international law provided for the equality of States and mutual respect for the

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[1] *Official Records of the United Nations Conference on the Law of the Sea* (United Nations publication, Sales No. 58.V.4) vol. I, document A/CONF.13/18.

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

rights of all peoples in the uses of the sea. Yet the concept of a special régime for archipelagic waters meant that there would be different provisions for large areas of ocean between the islands of archipelagic States wishing to extend their sovereignty over areas of the high seas much larger than their own land area. Indonesia and the Philippines, for example, claimed sovereignty over an area of the seas almost twice as large as that of their land territory. If the 200-mile economic zone, with the sovereign rights over the living and mineral resources that it implied, was to be added to the archipelagic waters, archipelagic States would have rights over vast areas of the high seas.

11. His delegation maintained that the question of the régime of archipelagic waters should be considered together with other related questions as a package deal. International rules should be drafted to take account of the interests of archipelagic States, which should, however, state clearly and unequivocally that they, in turn, were prepared to take account of the interests of other States. The régime of the waters of archipelagic States should be established in conjunction with a settlement providing for free transit passage along the shortest routes through archipelagic straits and waters traditionally used for international navigation.

12. In connexion with the question of straight baselines, the length of baselines used to delimit the so-called archipelagic waters and the territorial waters should be limited and clearly defined in the convention. A 48-mile limit had been proposed, but any other reasonable limit could also be considered. It was quite clear that individual islands belonging to archipelagic States should have their own territorial waters and could not be linked to the archipelago by straight baselines. Archipelagic States would, in any case, be in an advantageous position in comparison with other States in respect of living and mineral resources of the sea as they would have rights in a considerably larger part of the seas.

13. The proposals made by the archipelagic States might become acceptable to his delegation only if they agreed to free transit for all ships through archipelagic straits and waters used for international navigation, and if they recognized the right of unimpeded overflight. Such provisions would not interfere with the right of archipelagic States to use their own archipelagic waters or with their rights over the resources of those waters. He agreed with the representative of Bulgaria that articles 4 and 5 of document A/CONF.62/C.2/L.49 were unacceptable as they provided only for the principle of innocent passage of ships through archipelagic waters and also because, in article 5, they provided for the possibility of restriction of passage. Such proposals, which did not strive towards compromise, were unrealistic. He would be in a position to support the proposals of the archipelagic States if they accepted the 12-mile limit for territorial waters, and free transit, without exception, for ships through archipelagic waters of archipelagic States and through all other international straits.

14. His statement referred only to those very few archipelagic States which were constituted by a group of islands and the ocean space between them and which had geographical, and traditional political, economic and administrative unity. He stressed that the Committee should not deal in that connexion with questions concerning archipelagos off the coast of mainland States which formed part of their territory. He would oppose any proposal for any régime for such archipelagos or islands which would differ from that applied to the mainland State. Any attempts by individual mainland States to draft provisions for a special régime for such archipelagos were completely unjustified. Such attempts could lead to arbitrary action in many parts of the ocean, interference with navigation and extension of rights over large areas of the high seas, which would hardly promote progress and the strengthening of peace and understanding between peoples.

15. Mr. VALENCIA RODRIGUEZ (Ecuador) outlined the historical background to the concept of archipelagic States. The Institute of International Law had considered the matter in 1924 and 1928 and had formulated the unitary concept. Some proposals concerning archipelagic States had also been submitted to The Hague Conference for the Codification of International Law. The subject had not been covered by the 1958 Geneva Convention but there had been an awareness of the special needs of archipelagic States. At that time most archipelagos in the Pacific and Indian oceans had been colonial possessions which were being exploited by the European Powers. Those Powers had no interest in establishing a special régime for archipelagic waters since limiting the rights of colonized people made it easier to dominate them and exploit their natural resources.

16. As a result of the progress made in the decolonization process many new States had emerged with their own national character. The archipelagic States, born out of that process, were asserting their just claims for the first time with the full support of developing countries. The convention should contain a special chapter defining the terms "archipelagic State" and "archipelago"; it should also establish the right of archipelagic States to their own territorial sea and determine the method to be used for drawing the baselines for the territorial sea and other zones of jurisdiction. His delegation supported the view expressed by many delegations, and in particular by the representative of India, that no distinction should be made between archipelagic States and archipelagos forming part of the territory of continental States. It also endorsed the definition of "archipelago" and the provisions concerning archipelagos forming part of a coastal State contained in article 5, paragraph 2 and article 9 of document A/CONF.62/L.4.

17. As defined in its Constitution, the Republic of Ecuador consisted of the continental territory and the Columbus or Galápagos archipelago. Since its independence, Ecuador had exercised sovereignty over that group of islands: they were part of a single geographical, economic and political entity and had always been regarded as such. Therefore, the Columbus or Galápagos archipelago satisfied all the conditions implicit in the most rigorous definition of an archipelago forming part of a coastal State. In that connexion, he shared the views expressed by the representative of France at the previous meeting concerning the indivisibility of sovereignty.

18. The Galápagos Islands had been designated a national park in the interest of preserving species and in order to facilitate scientific research for the benefit of mankind. The Government of Ecuador had enacted legislation establishing a territorial sea of 200 miles, measured from the outermost point of the outermost islands and the lowest water mark, around the Columbus archipelago. The waters enclosed by those baselines were internal waters and subject to the relevant legal régime. As in the case of the continental territorial sea, the interests of the international community were duly protected with regard to freedom of navigation and overflight, the laying of cables and submarine pipelines, subject only to the limitations imposed by Ecuador's exercise of its sovereign rights in its territorial sea. The arguments in favour of the extension of the sovereignty of the coastal State over its adjacent sea were equally valid in the case of archipelagos, particularly with regard to security requirements.

19. Ecuador was not prepared to cede, in any circumstances, any part of its sea territory which consisted of a territorial sea of 200 miles extending from its continental coast and around the Columbus archipelago. His delegation had submitted proposals relating to the item under consideration in document A/CONF.62/C.2/L.10 and drew particular attention to the provisions of article 1, paragraph 1.

20. Problems relating to archipelagic States and archipelagos forming part of the territory of a coastal State were closely related and should be solved jointly. In that connexion, his delegation had submitted a proposal in document A/CONF.62/C.2/L.51 to the effect that the method applied to

the archipelagic State for the drawing of baselines should also apply to archipelagos that formed part of a State, without entailing any change in the natural régime of the waters of such archipelagos or of their territorial sea.

21. Mr. ARAMBURU-MENCHACA (Peru) shared the view just expressed by the representative of the Soviet Union that the emergence of new archipelagic States was one of the most novel aspects of the radical changes in the law of the sea. The concept of archipelagic States, together with those of the continental shelf, the exclusive economic zone of 200 miles and the régime of the sea-bed, constituted a departure from the régime of the high seas and the establishment of the jurisdiction of States or of an international authority over those zones to ensure that the international community was governed on a more equitable basis. The change had come about as a result of the emergence of many new sovereign States, which, as the representative of Ecuador had stated earlier, had not been conscious of the need to regulate navigation between the islands forming their archipelagos while they were colonized by powerful States. Significant changes had taken place in international relations, and particularly in the law of the sea, since 1939 when President Roosevelt issued directives concerning the territorial sea for the protection of United States interests.

22. Technological progress had also played a part in the development of the concept of archipelagic seas because of the need for more stringent protection against the risks deriving from advanced technology, particularly with regard to nuclear-powered ships and submarines. The measures adopted by some countries with regard to the entry of such vessels into seas under their sovereignty were fully justified. His delegation supported the concept of archipelagic waters and the establishment of a single territorial sea and exclusive economic zone for the entire archipelago and the view that enclosed waters between islands forming an archipelago should be regarded as internal waters when States considered such protection necessary. The concept of the archipelagic State served to consolidate the territorial unity of States such as Indonesia or Philippines; it ended in law the physical separation created by nature, and facilitated government administration. The concept was also valid in the case of States such as Ecuador in which the Galápagos archipelago was an integral part of the national territory. Interest in the resources and strategic situation of that archipelago further justified the measures which had been proposed.

23. Together with Chile and Ecuador, Peru had been an initiator of the doctrine of archipelagos which had led to the Santiago Declaration of 1952. That Declaration had subsequently become an international treaty, article 3 (IV) which provided that the zone of 200 nautical miles would extend in every direction from any island or group of islands. Ecuador had solved the problem of the Galápagos Archipelago on the basis of that provision. Such practice was logical and just and his delegation fully supported it.

24. The concept of archipelagos was only opposed by those who needed unrestricted freedom for their navies. Establishment of a single archipelagic territorial sea by the use of straight baselines would create no obstacle to navigation or trade since innocent passage would be recognized even in internal waters which had previously been territorial sea. Freedom of communications would therefore be guaranteed and those who opposed recognition of the concept of archipelagos would find that there was majority support for the position adopted by archipelagic States or States with off-lying archipelagos. His delegation supported the inclusion in the convention of a chapter concerning archipelagic seas on the lines of the proposals in document A/CONF.62/C.2/L.49. He endorsed the views expressed by the representatives of Ecuador, France, Honduras and India that the proposed régime should apply not only to archipelagic States but also to archipelagos forming part of the territory of a State. Notwithstanding the provisions of article 5, unimpeded innocent passage should be guaranteed through the archipelagic sea without prejudice to the existence of preferential régimes such as those envisaged for neighbouring States under article 2.

Mr. Tuncel (Turkey), Vice-Chairman, took the Chair.

25. Mr. ABDEL HAMID (Egypt), speaking on the question of archipelagic States, said that their special situation and needs made their survival dependent on the integral unity of their islands, waters and peoples. The League of Arab States, at its recent meeting in Tunisia, had recommended that the legitimate interests of archipelagic States should be accommodated in order to conserve their unity and ensure their geographical and political survival. The representative of Indonesia had spoken of the concept of the archipelagic State and the need to protect the security interests of such States; the Egyptian delegation felt that that was a legitimate concern. Article 4 of the draft before the Committee provided for the right of innocent passage for ships of all States through archipelagic waters, which, he felt, reflected the legitimate desire of archipelagic States to reduce expenditure on national defence so that they could use the funds thus saved for national development. He also noted with approval that article 2 of the draft did not include any firm provisions with regard to the system of baselines; further negotiations on that question would be required.

26. Mr. KOH (Singapore) said that his position on the question of archipelagic States was based primarily on consideration of the objective merits of the case but was also influenced by his country's friendship with Indonesia and the Philippines, which, together with his country, Malaysia and Thailand, formed the Association of South-East Asian Nations, a regional organization that was growing in strength, coherence and achievement. He appreciated the crucial importance of the archipelagic concept to the territorial integrity, national unity and security of Indonesia and the Philippines. He accepted, in principle, the validity of the concept of a mid-ocean archipelagic State. His delegation was prepared to recognize Indonesia and the Philippines as archipelagic States, provided that the legitimate interests and rights of the international community, on the one hand, and of those countries' regional neighbours, on the other hand, were taken into consideration.

27. Turning to the question of the definition of an archipelagic State, he suggested that the definition given in article 1 of document A/CONF.62/C.2/L.49 could be made more precise. The sponsors of that draft might perhaps incorporate in subsequent drafts the kind of criteria suggested in document A/AC.138/SC.II/.44 (A/9021 and Corr.1 and 3, vol. III, sect. 33) which postulated a maximum permissible distance between islands and a maximum permissible land to water ratio as criteria for the definition of an archipelagic State.

28. Commenting on article 2, paragraph 5, of the draft articles in document A/CONF.62/C.2/L.49, he recalled the statement made by the representative of Malaysia at the 25th meeting and expressed the hope that the sponsors of the draft and the delegation of Malaysia would hold consultations with a view to finding a formula acceptable to both sides.

29. The main source of protein for the people of Singapore was fish, and approximately half the total catch was taken in areas of the high seas which would be enclosed by the Indonesian archipelago and thus transformed into archipelagic waters. He had taken note of the statement made by the representative of Indonesia at the same meeting that some neighbouring countries might have a problem in connexion with traditional fishing in Indonesian waters, and he hoped that the sponsors would incorporate in the draft articles a suitable formulation of the rights of neighbouring States to fish in archipelagic waters.

30. Mr. RABAZA (Cuba) noted that the archipelagic concept and the question of a special régime for archipelagic waters were of fundamental importance to a considerable number

of States whose problems had not been considered at the 1930 Hague Conference for the Codification of International Law or at the 1958 or 1960 Geneva Conferences on the Law of the Sea. Several different approaches had been taken at the Hague Conference with respect to archipelagos: some representatives had proposed that each island should be considered to be an individual unit with its own territorial sea; others had suggested that there should be a belt of territorial waters round archipelagos when the islands composing the archipelago were not more than a certain distance apart; and a handful of others had maintained that archipelagos could constitute a whole on the basis of their geographical characteristics. No definition had been given of the nature of the waters within the group of islands. Subsequently, the International Law Commission had indicated that it too was unable to overcome the problems involved in a definition of archipelagos. The 1958 Geneva Conference had not reached any conclusion on the question, although article 4, paragraph 1, of the Convention on the Territorial Sea and the Contiguous Zone provided for the use of the method of straight baselines to measure the breadth of the territorial sea where there was a fringe of islands along the coast. The 1960 Geneva Conference had not provided any definition of an archipelago either.

31. The Cuban archipelago was composed of two main islands and over 1500 medium-sized and small islands.

32. The Conference owed it to the archipelagic States to settle the question of a definition. Archipelagic States were States composed of one or more archipelagos made up of islands or groups of islands that were so closely linked that they formed a geographical, economic and political whole. He supported the use of straight baselines between suitable points as the most appropriate method of delimiting the waters of archipelagic States. In using baselines linking the outermost points of the outermost islands, the State concerned should ensure that those baselines followed the general direction of the coastline of the main island or islands and were not drawn from or to isolated reefs or islands. Archipelagic waters should not include territory belonging to other States or enclose as internal waters areas of the sea that were or could be used for international navigation, such as channels or straits which linked two parts of the high seas and also were the natural and shortest routes of a State for its international communications and in which freedom of navigation had always existed. Those provisions might well be included in some of the drafts recently submitted to the Committee. Remote and isolated islands in mid-ocean could not be grouped together and regarded as archipelagos, as the criterion for defining an archipelago was geographical, economic and political unity between its constituent parts.

33. Mr. TARCICI (Yemen) said that he fully appreciated the legitimate concerns of those delegations which had submitted the draft articles in document A/CONF.62/C.2/L.49. His Government, strongly believing in full State sovereignty over territorial waters, felt that the draft articles were inspired by a legitimate concern for sovereignty over territorial waters and waterways linking islands. The case of archipelagic States was clearly a special case and should therefore be given a separate chapter in the future convention on the law of the sea. The delimitation of the territorial waters, internal waters and economic zone of archipelagic States was a matter of great complexity, and the sponsors of the draft had suggested practical and realistic solutions. Representatives of archipelagic States had said that they had always borne in mind the interests of other States in drawing up the general principles on which the draft had been formulated, and they had offered to negotiate with interested States in order to improve the draft, particularly with regard to the question of innocent passage. The seas should be used to bring countries together by facilitating communications, but that principle should not in any way serve as a pretext for depriving States of their sovereignty over their national waters. In conclusion, he expressed his delegation's support for the draft articles before the Committee.

34. Mr. GAYAN (Mauritius), observing that the Conference should not only draw up a convention but should also ensure the progressive development of the international law of the sea, said that there should be an entirely separate régime for archipelagic States. The archipelagic concept should not give rise to inordinate fears, and the fact that it had been recognized and then shelved at the 1958 Geneva Conference did not mean that it should not now be accepted as part of international law. There were basically two fundamental problems concerning the archipelagic concept, the need to define an archipelagic State and delimit its archipelagic waters, and the régime of passage through such waters. The draft articles in document A/CONF.62/C.2/L.49, of which his delegation was a sponsor, contained proposals relating to both questions.

35. The definition of an archipelagic State in article 1 of the draft, according to which it was a State constituted wholly by one or more archipelagos and might include other islands, was a restrictive definition which would ensure that no State which did not satisfy the objective and restrictive criteria for that definition would qualify as an archipelagic State. The archipelagic concept should apply only to States that were genuinely archipelagic, constituted entirely by islands forming one or more archipelagos or by one or more archipelagos and other islands. Any State which had historically been regarded as an archipelagic State would not be deprived of that status. Non-archipelagic States would not, however, be allowed to avail themselves of the régime the Conference was to establish.

36. At its Addis Ababa and Mogadiscio meetings in 1973 and 1974, respectively, the Organization of African Unity had recognized the special position of archipelagic States. General rules of the international law of the sea did not adequately cover their position. The draft before the Committee stated clearly why special treatment was necessary in the case of such States: the islands, the interconnecting waters and other natural features of the archipelagic State were intrinsically linked so that they formed a single physical and economic entity. That description had of course to be supplemented by a political factor, for one of the primary conditions was that an archipelagic State should be an independent State, a political and sovereign entity. The waters could not be disassociated from the land territory of an archipelagic State, and any rule or principle which tended to interfere with the geographical unity of an archipelagic State would be unacceptable to his delegation.

37. Turning to the question of the juridical status of archipelagic waters, he said they were constituted by the waters enclosed by straight baselines drawn to connect the outermost points of the outermost islands forming the archipelagic State; those were the baselines from which the breadth of the territorial sea and other special zones was measured. He hoped that the term "archipelagic waters" would soon form part of the language of international law. He saw no difficulty in maintaining the right of innocent passage through such waters, although the archipelagic State might designate sea lanes for some categories of vessels, particularly nuclear vessels or vessels carrying dangerous cargoes. While it would not be proper to impose restrictions that would effectively nullify the right of innocent passage, the archipelagic State would nevertheless retain the residual right to suspend all passage through the archipelagic waters should the protection of its security interests necessitate such action. He favoured a uniform régime of passage through archipelagic waters and would support any system that ruled out a multiplicity of régimes regarding passage. Whatever the régime of passage it should in no way undermine the sovereignty of the archipelagic State over the water column, the sea-bed and the subsoil of the archipelagic waters.

38. He assured the Committee that it was not the intention of the sponsors of the draft to subject to their sovereignty large expanses of the oceans. The sponsors were not claiming the status of archipelagic States because they had expansionist ambitions but only because they wished for a régime which would satisfy the needs of their special geographical situation.

39. Mr. DE ABAROA Y GOÑI (Spain) said that, since the nineteenth century, his country had upheld the position that the islands and interconnecting waters of an archipelago constituted a natural entity. His delegation therefore fully supported article 5, paragraph 2, of document A/CONF.62/L.4, and article 1, paragraph 3, of document A/CONF.62/C.2/L.49.

40. It was time to recognize the new concept of archipelagic waters, of which no mention was made in the 1958 Geneva Conventions, but which were clearly defined in article 7 of document A/CONF.62/L.4 and in article 3 and the following articles of document A/CONF.62/C.2/L.49; that meant relinquishing the principle that the archipelagic State could not extend its sovereignty beyond the fringe corresponding to each of the islands of the archipelago considered separately.

41. In fact, the new concept of the economic zone suggested that the islands and waters of an archipelago should be considered as a whole, subject to the same legal régime, with the clear delimitation of its external boundaries, surrounded by the corresponding belt of sea in which the archipelago would exercise, like all other States, sovereignty and competences as might be laid down in the final convention.

42. Document A/CONF.62/L.4 had additional merits: articles 9 and 11 would ensure the application of the same principles to archipelagos forming part of a coastal State. There was not the slightest doubt as to the legal and political correctness of such provisions; without them, the future law of the sea would seriously penalize such States.

43. The delimitation of archipelagos naturally engendered certain problems. In every case, however, they should be solved on the basis of identical treatment of all the integral parts of the territory of the State. His delegation took the view that the provisions to be adopted for delimitation in the case of adjacent or opposite States would permit the satisfactory solution of any problems that might arise, provided such provisions clearly established a general rule while allowing for the possibility of adapting it to particular cases.

44. Mr. KHARAS (Pakistan) expressed his country's deep anguish over the news of continuing floods in Bangladesh.

45. He said that the peculiar geographical characteristics of an archipelagic State entailed special needs requiring rules to ensure its national existence. It constituted a single political, economic, social and legal unit. His delegation therefore fully sympathized with the concerns of such States and supported in principle the concept of archipelagic States.

46. Agreement would still be required, however, on delimitation and the régime of passage through archipelagic waters. There were two basic approaches to delimitation. One of them, as typified by the United Kingdom proposal submitted to the sea-bed Committee (*ibid.*), was that the criteria could be a maximum length of straight baselines joining the outermost islands and a specified ratio of land to water. Archipelagic States had reservations regarding that mathematical approach, believing that the application of any arbitrary criterion ran counter to the very basis of the archipelagic concept.

47. While it was desirable to obviate mabiguity in the delimitation of baselines, the organic unity of archipelagic States should be paramount; any criteria adopted should retain flexibility to meet peculiar geographical characteristics. He accordingly welcomed article 2 of document A/CONF.62/C.2/L.49 which, to some extent, limited the arbitrary application of the straight baseline system, and he hoped such efforts would be continued. He also noted with satisfaction the additional provision in paragraph 5 of that article which sought to ensure to an immediately adjacent neighbouring State the continued right of communication.

48. The interest of the international community would be affected not so much by what was enclosed within the baselines of an archipelagic State as by the régime governing passage through its waters. Views differed, however, as to the limitation of sovereignty that would be necessary. The United Kingdom proposal to which he had referred envisaged that the rules on passage through straits used for international navigation would be applicable to those parts of archipelagic waters which had been used as routes for international navigation between one part of the high seas and another part of the high seas or the territorial sea of another State, and to those parts of the adjacent territorial sea which had been so used. Rules on passage through the territorial sea would be applicable to all parts of archipelagic waters and the territorial sea to which the régime of straits did not apply.

49. The archipelagic States, on the other hand, maintained that foreign vessels would be entitled under existing international law to only innocent passage through their waters; they also claimed the right to designate sea lanes, regulate passage through them and prescribe traffic separation schemes. His delegation supported the view that innocent passage should be permitted through archipelagic waters, including those parts used for international navigation, on the basis of criteria that would facilitate the passage of all ships of all nations and at the same time safeguard the legitimate interests and rights of the archipelagic States. In that regard he welcomed the willingness of some archipelagic States to allow merchant vessels the use of normal sea routes.

50. The relationship of the archipelagic concept with that of the economic zone must await the final evolution of the two concepts. It would be unfair, however, if archipelagic States were to obtain an economic zone of greater area than would be the case had the archipelagic concept not been recognized.

51. The question remained whether the justifications and imperatives underlying the concept of an archipelagic State also held good in the case of archipelagos belonging to continental States and, if so, what the implications were for the world community. He particularly had in mind the situation in enclosed or semi-enclosed seas where the extension of that concept to archipelagos belonging to continental States would create great hardship to the other States of the area.

52. Mr. VOHRAH (Malaysia) said that the views and reservations expressed by his delegation at the 25th meeting of the Committee still stood. However, he wished to stress how crucial the archipelagic concept and its implications were to his country, especially in relation to the rights of access and communication in the context of its national unity between the two parts of its territory, and to the adverse effect on States in the region of a further claim to a 200-mile economic zone beyond the archipelagic boundaries.

53. He agreed with the representative of Thailand that archipelagos should be accorded special treatment. Equity also demanded that in that treatment due account should be taken of the rights and interests of neighbouring States affected by the archipelagic claim.

54. His delegation had only just seen document A/CONF.62/C.2/L.49 and had not yet had sufficient time to study all its provisions in detail. He therefore reserved the right to comment on it at an appropriate stage in the future and also to submit new proposals or amendments, if his delegation deemed it necessary.

55. He also expressed his delegation's appreciation to the representative of Singapore for the reference the latter was kind enough o make in his statement on Malaysia's problem.

56. Mr. BARRA (Chile), emphasizing the importance of the question of archipelagos, said that the International Court of

Justice, in the Fisheries Case between the United Kingdom and Norway,[3] had recognized the coastal State's right to connect by means of straight baselines those points on the coast where there were deep indentations and cuts or where there was a fringe of islands adjacent to the coast, the waters enclosed by such baselines constituting internal waters. The use of the straight baseline method for determining the territorial sea of such States was also sanctioned in article 4 of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone.

57. On the other hand, there was a gap with regard to the law of archipelagic States. That was why his delegation had joined in sponsoring document A/CONF.62/L.4. He noted that document A/CONF.62/C.2/L.49, in its basic articles, agreed to a large extent with the former document, especially in connexion with archipelagic States. It defined the waters enclosed by straight baselines as "archipelagic waters", in order to differentiate them from the internal waters produced by such baselines in the case of countries whose coastline was deeply indented or cut into or which possessed a fringe of islands along the coast; that difference was emphasized even more by the provision contained within square brackets at the end of that document.

58. With certain relatively simple amendments, those two documents would bring much nearer a solution to the problem of archipelagos.

59. Mr. BEESLEY (Canada), drawing attention to his delegation's statement at the 46th plenary meeting and its sponsorship of document A/CONF.62/L.4, said he wished to clarify his delegation's position on certain questions that it had not yet mentioned.

60. The basic question was the need to define the very difficult concept of an archipelagic State. However, the existence in both law and geography of such a phenomenon as an archipelago, whether an archipelagic State or a coastal State with one or more off-lying archipelagos which formed an integral part of its territory, could not be ignored. That fact was reflected in his and other delegations' proposals in articles 5-11 of document A/CONF.62/L.4.

61. Many further questions arose, such as the minimum number of islands to be regarded as constituting an archipelago, the ratio of land to water and the nature of the link between land and water. Obviously, a clear-cut definition was needed, but without violation of that area of existing law relating to fringes of islands which dated back to Norwegian state practice, as upheld in the Anglo-Norwegian Fisheries Case, and in accordance with the concept embodied in article 4 of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone. Unless the concept was very carefully defined, there was a danger of calling into question the existing concepts of law that were not only soundly based and widely accepted but also very necessary in any future law.

62. In the adoption of criteria such as the length of the baseline, care must be taken to avoid excluding certain groups of islands. Indeed, some of the very factors that had been treated as absolutely essential, such as the length of the baseline, might seem much less important if and when some accommodation was reached on the overriding issue, namely passage through straits used for international navigation.

63. For straits to be considered international, there must have been traditional usage. Once that delicate problem had been resolved, such factors as the length of the baseline, or the manner of delineating a sea lane, would be relevant to the concept of an archipelago, which was an emerging concept and not just a claim advanced by certain States. At the same time, account must be taken of the problems of islands that might not fall neatly into any definition of an archipelago. A comprehensive and equitable approach was therefore required. There was a need to assess the status of archipelagic waters vis-á-vis the status of the economic zone. It was clear from some proposals that the basic approach was founded upon the principle of sovereignty, while the concept of the economic zone was an assertion of a number of types of jurisdiction which together fell short of sovereignty.

64. His country was particularly interested in the question and would co-operate with all delegations interested in resolving it in a manner which ensured precision and which avoided creating a controversial concept that could not be regulated.

65. Mr. BENCHERKH (Algeria) said that his delegation, having studied the various drafts before the Committee and in accordance with the general principles of his country's foreign policy, believed that the arguments advanced by the archipelagic States should be heeded.

66. So far, international law had not admitted the concept of the archipelagic State, but such an omission was not a valid reason for refusing to examine the problem now. Neither could the Geneva Conventions of 1958 be adduced to justify opposing that concept, since they had not been ratified by many States and were largely outdated, as the statements of a large number of delegations had shown.

67. An archipelagic State was one which was exclusively made up of islands. The attempts of continental States to make use of that concept for their own benefit on the pretext that they possessed a few islands should be squarely rejected.

68. The conditions of life of archipelagic States were often difficult and justified recognizing their particular rights in the future convention on the law of the sea so as to enable them to protect their sovereignty and promote their development. His delegation viewed with sympathy the draft articles relating to archipelagic States in document A/CONF.62/C.2/L.49. However, certain continental coastal States wanted to take advantage of the situation to grab for themselves more and more ocean space. They did not even want to take into account the special situation of States bordering enclosed or semi-enclosed seas or the fact that their claims were in disregard of the rights of other States or, what was more, the fact that the Conference was supposed to ensure respect for the common heritage of mankind so as to assist various countries in their fight against under-development. His delegation could not but oppose with the utmost vigour the claims of continental States which sought to usurp the rights which pertained specifically to archipelagic States. To give in to such claims would amount to granting a double privilege to those States, which was contrary to the spirit of the Conference. His delegation realized that the new law of the sea could not be perfect, but at least it should not accentuate the conditions of inequality and domination which had prevailed so far.

69. It was not the intention of his delegation to call into question the sovereignty of continental States over any islands they might possess off their coasts. But the recognition of that sovereignty should not result in the granting of exorbitant rights to continental States. Those with islands off their coasts wished to have the right to the various maritime spaces but the sovereignty they exercised over islands off their coasts applied to the territory of those islands. His delegation was sympathetic to the position of the archipelagic States, but it recommended vigilance with regard to any attempt on the part of continental States which possessed islands to extend their rights. The section of document A/CONF.62/L.4 concerning archipelagic States illustrated the ambitions of the continental States and his delegation rejected that document. His delegation hoped that in the document summarizing the main trends on the various issues under discussion, the legitimate interests

[3] *Fisheries Case, Judgment of December 18th, 1951: I.C.J. Reports 1951*, p. 116.

of the archipelagic States would be recognized and the expansionist aims of certain continental States with islands rejected.

Mr. Aguilar (Venezuela) resumed the Chair.

70. Mr. YOLGA (Turkey) said his delegation hoped that the archipelagic States would be accorded the rights they deserved because of their particular situation. Archipelagic States had to face more difficult problems than the continental States with regard to communications, national cohesiveness, security, and the financial burden of administration. In so far as possible, however, the new law of the sea must establish precise criteria with regard to the concept of the archipelagic State and take into account the interests of the international community and neighbouring States.

71. His delegation welcomed the laudable spirit of conciliation manifested in document A/CONF.62/C.2/L.49.

72. Continental States which possessed islands should not be mistaken for archipelagic States. To generalize any rule of law was contrary to the interests of the international community and often resulted in injustice. His delegation had distributed a map which illustrated the consequences of applying the régime of archipelagic State in the Aegean Sea. A cursory examination showed that practically the whole sea would become the internal waters of one of two countries, while the other would be excluded from waters which had traditionally been open to it and its economic rights with regard to fishing and the continental shelf would be nullified. Most importantly, one of the two States would be deprived of the right to take measures for its own defence in a sea which was of great importance to it. The application of the relevant provisions of documents A/CONF.62/L.4 and A/CONF.62/C.2/L.22 would upset a historically established balance for the benefit of only one of the States in the area. His delegation therefore categorically rejected the application of the archipelagic State concept to the archipelagos belonging to the continental States.

73. Mr. KEDADI (Tunisia) said that like the new concept of the exclusive economic zone, the concept of the archipelagic State also seemed to have won widespread acceptance, although such approval was still subject to a number of considerations concerning the definition of the archipelagic State.

74. The concept of the archipelagic State was designed primarily to strengthen the geographic, economic and political unity of a country. In conformity with the Declaration of the Organization of African Unity on the issues of the law of the sea, his delegation supported that entirely legitimate aim. However in promoting the concept of the archipelagic State, the countries concerned must guard against creating any new implications which might affect the fundamental concepts of international law, which had established a reasonable balance between the mutual rights and obligations of States.

75. His delegation had great difficulty in accepting the definition of the archipelagic State in article 1 of document A/CONF.62/C.2/L.49. Paragraph 1 of that article, which restricted the application of the provisions of the document to archipelagic States alone, did not satisfy his delegation. Paragraphs 2 and 3 introduced the new concept of an archipelago, which no dictionary had as yet satisfactorily defined. In order to preclude abuses of that concept, his delegation urgently appealed to the sponsors of the document to abandon the concept set out in that document, which was still very much in dispute, and settle upon the most simple definition of an archipelagic State as one made up of several islands whose baselines constituted the applicable baselines for the archipelagic State. His delegation preferred the use of the term "archipelagic State" as opposed to the term "archipelago". While his delegation was quite favourable to the concept of archipelagic States, it could not accept the controversial concept of archipelagos which belonged to States.

76. In the event that the sponsors of the document accepted the suggestions of his delegation, it could readily accept the concept of the archipelagic State.

77. Mr. OGUNDERE (Nigeria) said that his delegation was favourable to the archipelagic concept, but that it needed to be further elaborated and redefined, for example with regard to innocent passage through archipelagic waters. The concept of the archipelagic State could however be considered a fait accompli since there was general agreement that the time had come for the international community to embody it in the future convention.

78. Mr. SURYADHAY (Laos) said that his delegation hoped the new law of the sea would safeguard the principles of justice and equity and would be in harmony with the legitimate aspirations of all States.

79. The method of drawing baselines from the outermost points of an archipelago was the most rational method for delimiting the archipelagic waters of archipelagic States. While providing for the unity, political independence, and security of such States, the draft articles in document A/CONF.62/C.2/L.49 went a long way towards accommodating the traditional freedoms of the high seas and the obligations which followed from those freedoms.

80. His delegation was pleased that the Philippines and Indonesia, its two neighbours in South-East Asia, shared the same conception of the rights and obligations of archipelagic States. However the affirmation of the archipelagic concept ran counter to some of the traditional interests of neighbouring States of those two archipelagic States. In the view of his delegation, the concerns and acquired rights of the three other members of the Association of South-East Asian Nations had to be taken into account in the context of their common efforts to build a zone of freedom, peace and neutrality. His country appreciated the understanding of its problems shown by its neighbours in South-East Asia and intended to join the Association of South-East Asian Nations as soon as circumstances permitted.

81. The recognition of the status of archipelagic States would be a progressive step enabling such States to realize fully their aspirations for unity, sovereignty and territorial integrity.

82. Mr. REBAGLIATI (Argentina) said that his delegation sympathized with the legitimate desire of the archipelagic States to have their interests protected in the new convention on the law of the sea.

83. The provisions of the new law of the sea concerning archipelagos had to safeguard the rights of the international community with regard to communications. In that connexion, the draft articles in document A/CONF.62/L.4 provided a good basis. That text, as well as the statements of a number of delegations, clearly distinguished among archipelagic States, States which possessed archipelagos far from their coasts, and States which possessed a fringe of islands in close proximity to their coasts. However, his delegation believed that distinctions as to the régimes applicable to those three categories of archipelagos should be avoided as far as possible and agreed with the delegations of Ecuador, Spain, and India to the effect that the provisions relating to archipelagic States should apply *mutatis mutandis* to distant archipelagos which belonged to a continental State. Nevertheless, it should be made clear that the coastal State could not draw baselines connecting the coasts of its continental territory with those of its distant archipelago.

84. When distinguishing the so-called coastal archipelagos situated in close proximity to the coast, it was necessary to take into account the following considerations: first, that distinction related to the question of drawing the straight baselines used to measure the territorial sea of a State; and secondly, the drawing of such baselines was governed by certain require-

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